
United States
Circuit Court of Appeals

For the Ninth Circuit.

JOHN T. WATSON, Liquidating Receiver of and
for the Superintendent of Insurance of the
State of New Mexico,

Appellant,

vs.

REPUBLIC LIFE INSURANCE COMPANY OF
DALLAS, TEXAS, a corporation, H. B. HER-
SHEY, Receiver of Mississippi Valley Life
Insurance Company, R. E. O'MALLEY and
WILLIAM E. CAULFIELD, Receivers, J. G.
VAUGHAN, M. J. DOUGHERTY, GRACE V.
ROWELL formerly Grace V. Wallace, WIL-
LIAM H. WALLACE, a minor, ANNA
LOUISE WALLACE, a minor, R. L. DAN-
IEL, Chairman of the Board of the Insurance
Commission of the State of Texas.

Appellees.

Transcript of Record

Upon Appeal from the District Court of the United
States for the District of Arizona.

FILED

AUG 29 1933

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Austin, Texas,

Attorney for Appellee, R. L. Daniel,
Chairman of the Board of the Insurance
Commission of the State of Texas. [3*]

In the District Court of the United States
for the District of Arizona

No. E-361-Phx

JOHN T. WATSON,

Orator,

v.

REPUBLIC LIFE INSURANCE COMPANY OF
DALLAS, TEXAS,

H. B. HERSHEY, Receiver of Mississippi Valley
Life Insurance Company, and R. E. O'Malley
and William Caulfield—Missouri Receivers,

J. G. VAUGHAN, and

M. J. DOUGHERTY and O. E. PATTERSON,

Defendants.

*Page numbering appearing at the foot of page of original certified
Transcript of Record.

PETITION FOR LEAVE TO SUE

To the Honorable Dave W. Ling, Judge of Said Court:

Comes now John T. Watson, and respectfully shows to the Court:

1. That he is a citizen and resident of the City and County of Santa Fe, State of New Mexico, and he has been appointed by the Honorable Judge of the District Court of the First Judicial District of the State of New Mexico, in Cause numbered 14867 on the docket of said court, wherein Richard C. Dillon, for himself and other similarly situated, brought a suit against the Superintendent of Insurance of the State of New Mexico, Joseph B. Thompson and William B. Caulfield, Receivers of Mississippi Valley Life Insurance Company, a corporation, appointed by the Circuit Court of the City of St. Louis, Missouri, H. B. Hershey (substituted for Alvin S. Keys) Receiver of said Mississippi Valley Life Insurance Company under order of the Circuit Court of Sangamon County, Illinois, and Republic Life Insurance Company of Dallas, Texas, a corporation, for the purpose of liquidating the assets pledged with the Insurance Department of the State of New Mexico, to secure the policies that had been registered with the Insurance Department of the State of New Mexico, having been issued by the National Life Insurance Company of the Southwest. [4]

2. That the National Life Insurance Company of the Southwest did transfer and assign all of its business, together with the securities on deposit with the Insurance Department, to the Two Republics Life Insurance Company of El Paso, which maintained said deposits, securing all the old policies issued by the National Life Insurance Company of the Southwest, and thereafter, the Two Republics Life Insurance Company transferred and assigned all of its business and assets to the Mississippi Valley Life Insurance Company, a corporation of Illinois, and they in turn recognized and maintained the same securities, or some substituted therefor, among which was a lien given by James Q. Wallace for the principal sum of \$32,000.00, upon the hereinafter described property, situated in Maricopa County, Arizona, to-wit:

The Southeast $\frac{1}{4}$ of Section Nineteen, Township One North, Range Six East, of the Gila and Salt River Base and Meridian, in Maricopa County, Arizona.

3. That all of said assets were deposited with the Insurance Department of the State of New Mexico, under and by virtue of what is now known as Section 71-155 of the New Mexico Statutes Annotated, 1929, which reads as follows:

“71-155. Registered Policies. When any policies have heretofore been registered with the insurance department of the state of New Mexico, or with the office of the bank examiner under the conditions of section 38, chapter 48

(Rep.), of the session laws of the year 1909, it shall be the duty of the superintendent to maintain a register of such policies in a form that will enable him to compute the net value of such policies at any time, and it shall be the duty of each company having any such registered [5] policies in force to semi-annually supply the superintendent with a certified list of the net value of all such registered policies in force as at that date, and to at all times maintain approved securities of one of the kinds authorized as an investment for any insurance company with the corporation commission of an amount equal to the said net value, and whenever it be shown that the amount of said securities so on deposit is in excess of the net value of the registered policies of such company the amount of such excess shall be immediately released and delivered to the company; Provided, that in computing the net value of any policies so registered credit shall be allowed on each policy for the amount of any outstanding policy, loan or lien secured exclusively by the cash or loan values of said policy. (L. '25, Ch. 135, Sec. 55."

4. That there was no provision in the insurance law of New Mexico which gave to the Insurance Department of the State of New Mexico the right to liquidate the escrowed or pledged securities or assets, in case of a default or insolvency of the in-

insurance company, and the Mississippi Valley Life Insurance Company was declared insolvent on theday of April, 1932, in cause numbered 56734 in the Circuit Court for the County of Sangamon, State of Illinois, in cause entitled People of the State of Illinois ex rel, Leo H. Lowe, Director of Trade and Commerce of the State of Illinois, as Plaintiff, versus Mississippi Valley Life Insurance Company, and Alvin S. Keys was appointed Receiver therefor.

5. That on the 18th day of May, 1932, the Republic Life Insurance Company of Dallas, Texas, acting by and through E. H. Banta, its Vice-President, made a contract with the Receivers of the Mississippi Valley Life Insurance Company, whereby the Republic Life Insurance Company of Dallas, Texas, [6] took over the policies that had formerly been written by the Two Republics Life Insurance Company, which included the registered policies previously written by the National Life Insurance Company of the Southwest, and making a contract, a copy of which is hereto attached and made a part hereof, marked "Exhibit A," paragraph three of which provided:

"On all policies which are secured by deposit with the Insurance Department of the State of New Mexico, the party of the first part shall be entitled to receive from said Insurance Department of the State of New Mexico, securities now on deposit to the value of the reserve of the policies on which said

party of the first part assumes liability hereunder and the policy holders accept such assumption, and said party of the first part shall, with the consent of the Insurance Department of the State of New Mexico, be entitled to have said reserves credited to it in such manner as the Insurance Department of the State of New Mexico shall approve, and said Alvin S. Keys, Receiver, shall be entitled to the reserves on deposit with the said Insurance Department of the State of New Mexico, in excess of the claims which are against the said deposits. The lien on any such policy shall be reduced by the amount credited to, or received by, said party of the first part from said deposit with said insurance Department of the State of New Mexico on account thereof."

And at that time were furnished a list of securities on deposit with the Insurance Department of the State of New Mexico, as of date May 16, 1932, copy of which is attached hereto, marked "Exhibit B."

6. That the said land was transferred to the Mississippi Valley Life Insurance Company, but although the legal title then rested in the Mississippi Valley Life Insurance [7] Company, they at all times recognized that the equitable title to the lien thereon was in the Insurance Department of the State of New Mexico.

7. That after making the said contract, the said E. H. Banta brought a pretended suit in the Su-

perior Court of the State of Arizona in and for Maricopa County, entitled, E. H. Banta, Plaintiff, versus A. O. Pelsue, as Receiver of the Mississippi Valley Life Insurance Company, numbered 37799 on the docket of said court, and received a decree of said court on August 22, 1932, that he was the owner in fee simple of the above described land, but a finding of the Court in said decree recognized the escrow contracts of purchase and sale of said land being with the State of New Mexico.

8. That neither said E. H. Banta nor Republic Life Insurance Company of Dallas, Texas, received any transfer of either said land or the lien thereon from the Mississippi Valley Life Insurance Company of Illinois, or anyone acting under and by virtue of any authority for them, but acting with an evident design to take the property for the Republic Life Insurance Company of Dallas, Texas, did transfer the property to J. G. Vaughan, who, plaintiff is informed and believes, transferred said property back to Republic Life Insurance Company of Dallas, Texas, fraudulently intending thereby to prevent the said property being used in liquidation to pay the said registered policy holders.

9. That all contracts between all of the parties recognized the right of the Insurance Department of the State of New Mexico to said security.

10. That the Commissioner of Insurance of the State of New Mexico is not given by any Statute any authority to liquidate the said assets, and he has made an assignment to your petitioner of all

of said assets, and especially the Wallace lien and property, for the purpose of liquidation, and for the purpose of payment of all the registered policy holders aforesaid, through the District Court in said above [8] entitled cause, pending in Santa Fe, New Mexico.

11. That David Chavez, Jr., Judge of said court, finding that it was necessary to liquidate the Wallace property, being described as:

The Southeast $\frac{1}{4}$ of Section Nineteen, Township One North, Range Six East of the Gila and Salt River Base and Meridian, in Maricopa County, Arizona,

to pay the claims of said registered policy holders, entered an order authorizing your petitioner to establish the lien, rights, interest or title in or to said property, in his name as Receiver, for the benefit of the policy holders and claimants under said statute, a certified copy of which order is hereto attached and made a part hereof, marked "Exhibit C."

12. That there are no Arizona creditors that can have any claim against said property unless they are holders of registered policies issued by the National Life Insurance Company of the Southwest, and as to them, they have, along with all other registered policy holders, an equal right of participation in the liquidation for which said assets were escrowed.

13. That if he is not allowed to bring this suit, he fears irreparable injury will result, in that the

defendant will transfer said property to innocent purchasers, for value, and said property will be lost to the policy holders.

14. That the Republic Life Insurance Company of Dallas, Texas, is claiming to own said property, as it lists as part of its assets with the Insurance Department of the State of Texas, the above described property, as shown by copy of a letter hereto attached and made a part hereof, marked "Exhibit D."

Wherefore, your Petitioner asks leave to file the suit in this court against Republic Life Insurance Company of Dallas, Texas, H. B. Hershey, Receiver of the Mississippi Valley Life Insurance Company, J. G. Vaughan, and M. J. Dougherty, to the end that justice may be done, and that the property be [9] recovered for the benefit of the registered policy holders of the National Life Insurance Company of the Southwest, upon such terms and conditions as to the Court may seem just and right.

Post Office Address:
Sena Plaza, Santa Fe,
New Mexico;

Post Office Address:
415 Caples Bldg.,
El Paso, Texas,
Attorneys for Petitioner.

State of New Mexico,
County of Santa Fe—ss.

John T. Watson, being first duly sworn, upon his oath deposes and says: That he is over the age of twenty-one, is the Petitioner in the foregoing Petition for Leave to Sue; that he has read the same, and the matters and things therein stated are true, except those things stated upon information and belief, and these he believes to be true, and so states.

.....

Subscribed and Sworn to, before me, this.....
day of March, A. D. 1937.

.....

Notary Public in and for the County of Santa Fe,
State of New Mexico.

My commission expires: [10]

—————

EXHIBIT A.

AGREEMENT BETWEEN REPUBLIC LIFE INSURANCE COMPANY AND RECEIVERS OF THE MISSISSIPPI VALLEY LIFE IN- SURANCE COMPANY.

This Agreement, made and entered into this 18th day of May, 1932, by and between Republic Life Insurance Company of Dallas, Texas, party of the first part, and Joseph B. Thompson and William E. Caulfield, Receivers of the Mississippi Valley Life Insurance Company, a corporation, appointed

by the Circuit Court of the City of St. Louis, Missouri, and Alvin S. Keys, Receiver of the said Mississippi Valley Life Insurance Company, under authority of the Circuit Court of Sangamon County, Illinois, parties of the second part, Witnesseth:

1. Party of the first part agrees to assume as herein set out liability to insured and/or beneficiary on all policies known as ordinary life policies from and after noon central standard time May 16, 1932, issued by the Two Republics Life Insurance Company or National Life Insurance Company of the Southwest, and assumed by said Mississippi Valley Life Insurance Company, on which there are at said time no claims by death or disability and on which there is no default in premium prior to April 1, 1932, and on all ordinary life policies issued by said Mississippi Valley Life Insurance Company direct on which there are at said time no claims by death or disability and on which there is no default in premium prior to April 1, 1932.

2. Party of the first part shall be subrogated to the claims under all policies against the estate of Mississippi Valley Life Insurance Company on which the policy holders accept this assumption of insurance and may file a claim therefor in the receivership in the Circuit Court of Sangamon County, Illinois, transferred from the Circuit Court of Madison County, Illinois, and in the Circuit Court of the City of St. Louis, Missouri, and shall apply any sums received under such claims to the

benefit of any such policy holder in the form of reduction of the amount of lien hereinafter provided for against such policies. [11]

3. As part of the consideration for this contract there shall be established and placed against each policy on which liability is assumed hereunder by party of the first part, a lien equal to 100% of the legal reserve thereon on the basis established and carried on the books and records of said Mississippi Valley Life Insurance Company, on the date to which premium has been paid to said Mississippi Valley Life Insurance Company, plus mortality rate from May 16, 1932, to date such premium is paid, such lien to bear interest at the rate of 6% per annum compounded annually. Both lien and interest thereon shall be treated as a policy loan and shall be deducted from any payment made by party of the first part and from any settlement thereunder or from the value used to purchase any paid-up or continued insurance.

On all policies which are secured by deposit with the Insurance Department of the State of New Mexico, the party of the first part shall be entitled to receive from said Insurance Department of the State of New Mexico, securities now on deposit to the value of the reserve of the policies on which said party of the first part assumes liability hereunder and the policy holders accept such assumption, and said party of the first part shall, with the consent of the Insurance Department of the State of New Mexico, be entitled to have said reserves

credited to it in such manner as the Insurance Department of the State of New Mexico shall approve, and said Alvin S. Keys, Receiver, shall be entitled to the reserves on deposit with the said Insurance Department of the State of New Mexico, in excess of the claims which are against the said deposits. The lien on any such policy shall be reduced by the amount credited to, or received by, said party of the first part from said deposit with said Insurance Department of the State of New Mexico on account thereof. [12]

4. Party of the first part agrees that it will offer to the holder of any such policy term insurance at net cost to the extent of such lien so that each such policy holder may by carrying term insurance make available the full face of said policy in case of death.

5. The reinsurance and assumption of obligations herein provided for are further subject to the conditions, limitations and agreement that for a period of five years from the date as of which this contract becomes effective cash loans, except that part of the loan value that is applied to the payment of premiums on the policy on which the loan is made, and cash surrender values, shall not be available to such policy holders.

6. Party of the first part assumes no liability of any nature, or any claim on the policies herein reinsured, which shall originate prior to noon, Central standard time, May 16, 1932.

7. Said Jos. B. Thompson and William E. Caulfield, Receivers, parties of the second part agree to transfer and deliver to said party of the first part all cards, files, records and cabinets containing same pertaining to said policies, and mechanical equipment necessary for the keeping thereof, now in St. Louis, Missouri, as designated heretofore by list given said Thompson and Caulfield, Receivers, and said party of the first part agrees to pay said Thompson and Caulfield, Receivers, a sum to be fixed by the Circuit Court of the City of St. Louis, as the value thereof.

8. The holder of any such policies not defaulted for non-payment of premium may within one year after said default, subject to lien of proper amount of reserve, upon evidence satisfactory to said party of the first part, of the health and insurability of the insured have said party of the first part assume liability on such policy from the date of reinstatement forward, provided on policies where default is not prior to April 1, 1932, insurance will attach from May 16, 1932, at noon, central standard time, to be void unless premium [13] be paid on or before June 15, 1932.

9. Party of the first part hereby constitutes the Superintendent of Insurance of the State of Missouri, its attorney in fact for it and in its name to accept service of process in any court in the State of Missouri, on account of any policy wherein the insured is now a resident of the State of Missouri, and constitutes the Director of Trade and

Commerce of the State of Illinois its attorney in fact for it and in its name to accept service of process in any court in the State of Illinois on account of any policy wherein the insured is now a resident of the State of Illinois.

10. Party of the first part on or before August 31, 1932, agrees to furnish to parties of the second part a computation of the reserve on each policy on which it assumes liability hereunder as of April 25, 1932, plus the proportionate part of any unexpired premium in order to furnish the amount of the claim under each policy and to furnish a separate computation with the same information on all policies for which it receives the cards, the holders of which do not accept or receive insurance under the terms hereof.

11. Said parties of the second part shall at all reasonable times have access to any records received by party of the first part for any purpose necessary in the administration of said receiverships.

In Witness Whereof, said parties have executed these presents the year first above mentioned.

REPUBLIC LIFE INSURANCE
COMPANY

By.....

Vice-President.

Attest:

Secretary.

Receivers, Mississippi Valley Life Insurance Company, Circuit Court, City of St. Louis, Missouri.

Receiver, Mississippi Valley Life Insurance Company, Circuit Court of Sangamon County, Illinois, by transfer from Circuit Court of Madison County, Illinois. [14]

EXHIBIT B.

SECURITIES ON DEPOSIT WITH THE INSURANCE DEPARTMENT * STATE OF NEW MEXICO AS A GUARANTEE TO NATIONAL LIFE OF THE SOUTHWEST POLICIES.

May 16, 1932

Number	Name	Amt of Lien	Rate of Int.
40 CS	Jas. Q. Wallace	\$32,000.00	6
56 T	Jno. B. Milbourn	600.00	8
94 T	Julia A. Valdespino	7,000.00	6
96 T	R. T. Lewis	2,500.00	8
102 T	Yandell Realty Co.	12,000.00	6
103 T	Jas. Rehin	5,000.00	7
235 M	Stella Grady	4,200.00	6
39 CS	John R. Wallace	26,311.35	
		\$89,611.35	

[15]

EXHIBIT C.

State of New Mexico

County of Santa Fe

In the District Court

Richard C. Dillon for Himself and Others

Similarly Situated,

Plaintiff,

vs.

George M. Biel, (Substituted for Max Fernandez), Superintendent of Insurance of the State of New Mexico; Joseph B. Thompson and William B. Caulfield, Receivers of Mississippi Valley Life Insurance Company, a Corporation, Appointed by the Circuit Court of the City of St. Louis, Missouri; H. B. Hershey (substituted for Alvin S. Keys) Receiver of Said Mississippi Valley Life Insurance Company Under Order of the Circuit Court of Sangamon County, Illinois; and Republic Life Insurance Company of Dallas, Texas, a Corporation,

Defendants.

ORDER

The Court having been advised by John T. Watson, Referee and Receiver herein, that the services of Fred C. Knollenberg, Attorney at Law, have been secured in accordance with the order entered

herein on February 2nd, 1937, and as evidenced by the memorandum agreement filed herein; and it appearing to the Court that the assets now in the hands of the Receiver are insufficient to pay all claims now filed or to be filed herein; and it further appearing that it is to the best interests of the policy-holders and claimants in this Receivership to immediately file suit against the present claimants and holders of the tract of land known as the Wallace property and more fully described in the Report of John T. Watson Receiver at item seven, said property being described as the Southeast Quarter, Section 19, Township 1 North, Range 6 East of the Gila and Salt River Base and Meridian of Maricopa County, Arizona.

It Is Therefore Ordered and Decreed that John T. Watson Receiver herein forthwith proceed with suit in the [16] Arizona State or Federal courts after first having obtained and received permission from said Court to bring action to establish the lien, rights, interest or title in and to said property in his name as Receiver for the benefit of the policyholders and claimants herein.

(Signed) DAVID CHAVEZ, JR.

District Judge. [17]

EXHIBIT D.

R. L. Daniel,
Chairman of the Board and Life Insurance
Commissioner.

(Printed seal) : The State of Texas

Geo. Van Fleet

Actuary of the Board

State of Texas

Board of Insurance Commissioners

Life Division

Austin

March 12, 1937

Mr. Fred C. Knollenberg, Attorney

El Paso, Texas

Dear Sir:

The sworn annual statement filed with this Department as of December 31, 1936, by the Republic Life Insurance Company of Dallas, Texas, lists as part of its assets the following:

155 acres, So. E. qt. Sec. 19, Township 1, Maricopa Co., Arrizona, & Buildings

80 acres, No. E. qt. Sec. 19, Maricopa Co., Arizona, & Bldgs.

Very truly yours,

(Signed) GEO. VAN FLEET,

Actuary Board of Insurance
Commissioners.

GVF.mb

[Endorsed]: Filed Mar. 22, 1937. [18]

[Title of District Court and Cause.]

ANSWER OF DEFENDANT, H. B. HERSHEY,
RECEIVER OF MISSISSIPPI VALLEY
LIFE INSURANCE COMPANY.

Comes now H. B. Hershey, Receiver of Mississippi Valley Life Insurance Company (under appointment by the Circuit Court of Sangamon County, Illinois), one of the defendants in the above entitled cause, by Charles E. Bliss, his attorney, and for answer to the bill of complaint filed herein says:

1. That he admits the allegations of Paragraph I invoking the jurisdiction of this court and the residence of this defendant, but as to the other matters and things therein alleged he has no knowledge or information upon which to form a belief and prays for strict proof of same.

2. That this defendant has no knowledge or information upon which to form a belief as to the matters and things stated and alleged in Paragraphs II, III, IV, V, and VI. [26]

3. That from the records of said Mississippi Valley Life Insurance Company coming into the hands of this defendant as Receiver thereof, he verily believes the matters and things alleged in Paragraphs VII, VIII, IX, X, XI, XII, XIII, XIV, and XV of the complaint to be true and correct, and they are hereby admitted.

4. That he admits, as alleged in Paragraph XVI, the execution on May 18, 1932, of the con-

tract, copy of which is attached to the bill of complaint and marked Exhibit "K", with the defendant Republic Life Insurance Company of Dallas, Texas, in accordance with the order of the court dated May 18, 1932, in and by which said agreement said defendant agreed to assume the policy obligations of said Mississippi Valley Life Insurance Company, including the aforesaid registered policies issued by the National Life Insurance Company of the Southwest, but charging against each policy so assumed a lien in the amount of the whole legal reserve thereon, and avers that said contract did not purport to or as a matter of law did not affect or contemplate transfer of title to the property described in the bill of complaint, and further avers that said contract did not affect the rights and lien of the Superintendent of Insurance of the State of New Mexico but was intended to be a contract of reinsurance only in accordance with the tenor and effect thereof, as this defendant verily believes from the records.

5. That this defendant has no knowledge or information upon which to form a belief as to the matters and things alleged in Paragraph XVII of the bill of complaint and prays for strict proof of same.

6. That from the records of said Mississippi Valley Life Insurance Company coming into the hands of this defendant as Receiver thereof, he verily believes the matters and things alleged in

Paragraph XVIII of the complaint to be true and correct, and they are hereby admitted. [27]

7. That he has no knowledge or information upon which to form a belief as to the matters and things alleged in Paragraphs XIX, XX, XXI, XXII, XXIII, XXIV and XXV of the complaint and prays for strict proof of same.

H. B. HERSHEY

Receiver of Mississippi Valley
Life Insurance Company (Under
Appointment by the Circuit Court
of Sangamon County, Illinois).

CHARLES E. BLISS,

Rambach Building

Taylorville, Ill.

Attorney for H. B. Hershey. [28]

State of Illinois

Christian County—ss.

H. B. Hershey, being first duly sworn, on oath deposes and says:

That he is the duly acting and qualified Receiver of the Mississippi Valley Life Insurance Company, appointed for the purpose of liquidating the assets of the company for the benefit of the creditors, and as such he is familiar with the facts herein involved; that he has read the foregoing answer and knows the contents thereof; that the same is true, of his own knowledge, both in substance and in fact, except as to those matters therein stated on

information and belief, and as to those matters he believes them to be true.

H. B. HERSHEY

Subscribed and sworn to before me this 3rd day of March, A. D. 1938.

[Seal]

ELIZABETH LOVE

Notary Public in and for
Christian County, Illinois.

My Commission Expires: Nov. 24, 1939.

[Endorsed]: Filed Mar. 14, 1938. [29]

[Title of District Court and Cause.]

ANSWER OF J. G. VAUGHAN

To the Honorable David W. Ling, Judge of Said Court:

Comes now J. G. Vaughan, one of the defendants in the above entitled and numbered cause, and files this his original answer herein, and with respect would show to the Court:

I.

Your defendant would show to the Court that he is without knowledge of each and all of the allegations as made in Complainant's original bill of complaint, and that he is particularly without knowledge of the allegations as made in paragraph XIX, pages 10 and 11 of the Complainant's bill of complaint.

II.

Your defendant would further show that he neither owns, claims nor asserts any right, title, interest or right of possession in or to the premises described in Complainant's bill of complaint.

Wherefore, this defendant enters this his answer and disclaimer and prays that no costs be adjudged against him.

CECIL A. MORGAN

Fort Worth, Texas,
Counsel for defendant,
J. G. Vaughan.

[Endorsed]: Filed May 24, 1937. [31]

[Title of District Court and Cause.]

FIRST AMENDED BILL OF COMPLAINT

Comes now your Orator, and with leave of this Court first had and obtained, files this his First Amended Bill of Complaint against the defendants, in lieu of the original complaint filed herein on the twenty-second day of March, A. D. 1937, and alleges and respectfully shows:

I.

That this is a suit in equity wherein the matter in controversy exceeds, exclusive of interest and costs, the sum of three thousand dollars, and wherein the controversy arises and exists between citizens of different states, that is to say:

That your orator is a citizen and resident of the City and County of Santa Fe, in the State of New Mexico, and that he is the duly qualified and acting Liquidating Receiver of and for the Superintendent of Insurance of the State of New Mexico with respect to the assets in, and belonging in a fund deposited with said Superintendent of Insurance pursuant to [33] and in compliance with Section 38 of Chapter 48 of the Laws of the then Territory of New Mexico enacted in the year 1909, a true copy of which said enactment is hereto attached, marked "Exhibit A" and made by reference a part hereof, which said fund was created and stands, under said law, as security for the full legal reserve of policies registered thereunder, heretofore issued by National Life Insurance Company of the Southwest, a corporation heretofore organized and doing business under the laws of the State of New Mexico, and the liabilities under which said policies were assumed successively by the Two Republics Life Insurance Company, a Texas corporation, and Mississippi Valley Life Insurance Company, an Illinois corporation, and that your orator is so acting as such Liquidating Receiver pursuant to appointment by the District Court of the County of Santa Fe, State of New Mexico, a court having general jurisdiction in law and equity in a certain cause therein pending, being numbered 14867 on the Civil Docket of said Court, wherein one Richard C. Dillon is plaintiff and George M. Biel, now Superintendent

of Insurance of the State of New Mexico, is, among others, a defendant, and that your orator brings this suit under authority of an order of said Court, a true copy whereof is hereto attached and marked "Exhibit B" and under authority of an assignment by said George M. Biel, Superintendent of Insurance as aforesaid, a true copy whereof is hereto attached, marked "Exhibit C", and made by reference a part hereof, and that the purpose of this suit is to liquidate a certain security in the nature of a real estate mortgage upon lands within the jurisdiction of this Court, constituting one of the securities deposited, as aforesaid, with said Superintendent of Insurance for the security of the legal reserve of the policies aforesaid, all as hereinafter more fully set forth.

That Republic Life Insurance Company of Dallas, Texas, is an insurance company organized as a corporation under the laws of the State of Texas, having its principal [34] office and place of business at Dallas, in said state, and a citizen and resident of said state; that defendant H. B. Hershey is a resident and citizen of the State of Illinois, his residence being in the city of Springfield, his post office address in said city being 515 Grand Avenue East; that defendants R. E. O'Malley and William E. Caulfield are each and both citizens and residents of the State of Missouri, residing in the City of St. Louis in said state, their post office address in said city being 715 A Chestnut

Street; that defendant J. G. Vaughan is a citizen and resident of the State of Texas, residing at Dallas in said state, his post office address being Thomas Building in said city; that defendants M. J. Dougherty, Grace V. Rowell, William H. Wallace and Anna Louise Wallace are and each of them is a citizen of the State of Arizona and a resident of the County of Maricopa in said state, and R. L. Daniel, plaintiff is informed and believes, is the Chairman of the Board of the Insurance Commission of the State of Texas, and resides at Austin, Texas.

That the defendants Republic Life Insurance Company of Dallas, Texas, H. B. Hershey, Receiver of Mississippi Valley Life Insurance Company, J. G. Vaughan, and M. J. Dougherty, have all answered and are before the Court. That the Receivers of the Mississippi Valley Life Insurance Company under appointment of the Circuit Court of the City of St. Louis, Missouri, have heretofore filed a disclaimer of any interest in the property in controversy, and the defendant O. E. Patterson was heretofore dismissed as a defendant in this cause.

II.

That from the year 1909 the insurance laws of the State of New Mexico contained a certain statute enacted as Section 38 of Chapter 48 of the Laws of the then Territory of New Mexico of 1909, which said statute was thereafter re-enacted as Section

2859 of the New Mexico Statutes Annotated, Codification of 1915, a true copy of which is hereto attached, marked "Exhibit A" and made by reference a part hereof. [35]

III.

That from the effective date of said Section 38 the Bank Examiner of the State of New Mexico was charged by law with the administration of the insurance laws of said state, and with the supervision of insurance companies doing business therein, and particularly charged with the duty of administering said Section 38.

IV.

That in the year 1925 a new insurance code was adopted in the State of New Mexico, in and by which Section 38, aforesaid, was repealed, and was included, and now remains in force as Section 55 of Chapter 135 of the said Laws of 1925, thereafter compiled as Section 71-155 of the New Mexico Statutes Annotated, Compilation of 1925, a true copy whereof is hereto attached, marked "Exhibit D" and made by reference a part hereof; which said repeal and said foregoing provision became effective on, to-wit: March 20, 1925; and in and by which said new code the office of Superintendent of Insurance was created and invested with all powers and duties theretofore appertaining to the office of State Bank Examiner, and from which day said Superintendent of Insurance was, and thenceforth has been charged by law with the administration

of the insurance laws of the said State of New Mexico and with the supervision of insurance companies doing business therein, and particularly charged with the duty of administering and enforcing said Section 71-155 (Exhibit D).

V.

That while the statute first above referred to was in effect in said State of New Mexico, National Life Insurance Company of the Southwest, aforesaid, a corporation organized under and pursuant to the insurance laws of said state, issued a large number of policies which it procured to be registered pursuant to the provisions first aforesaid. [36]

VI.

That thereafter, and prior to the year 1923, said National Life Insurance Company of the Southwest sold and transferred all of its assets and business to The Two Republics Life Insurance Company, a corporation then duly organized, existing and operating under the laws of the state of Texas, which said The Two Republics Life Insurance Company assumed all of the obligations and liabilities, including the outstanding policy liabilities of said National Life Insurance Company of the Southwest.

VII.

That on, to-wit: the 16th day of January, 1923, said The Two Republics Life Insurance Company, being then the owner in fee of certain land situated

and being in the County of Maricopa, State of Arizona, described as follows, to-wit:

The Southeast Quarter (SE $\frac{1}{4}$) of Section Nineteen (19), Township One (1) North of Range Six (6) East of the Gila and Salt River Base and Meridian,

entered into a contract for the sale thereof to James Q. Wallace and Grace C. Wallace, they being husband and wife, a true copy of which said contract is hereto attached, marked "Exhibit E" and made by reference a part hereof; and which said executory contract was, on the 27th day of July, 1923, placed of record in the office of the County Recorder of the County of Maricopa, State of Arizona, in Book 19 of Agreements, at pages 203-7; wherein and whereby the said Wallaces, in addition to any sum which may have been paid by them upon the execution and delivery of said contract, agreed to make further payments in sum aggregating Thirty-two Thousand Two Hundred Fifty-five and no/100 Dollars (\$32,255.00); which said executory contract was deposited, in accordance with its provisions, in escrow in the Salt River Valley Trust & Savings Bank of Mesa, Arizona, together with a warranty deed duly signed and acknowledged by said The Two Republics Life Insurance Company, conveying the lands aforesaid to said Wallaces, and a quit claim deed, duly signed and acknowledged by said Wallaces, conveying the lands aforesaid to the said The Two Republics Life Insurance Com-

pany. [37] And it was provided by said executory contract that upon performance of the terms and conditions of said contract by the said Wallaces to be performed, said The Salt River Valley Trust & Savings Bank, escrow holders aforesaid, should deliver to said Wallaces the warranty deed aforesaid; and it was further provided that if the said Wallaces should make default in the terms and conditions of said contract by them to be performed, said escrow holder should return to said The Two Republics Life Insurance Company the warranty deed aforesaid, and deliver to said The Two Republics Life Insurance Company the quit claim deed aforesaid.

VIII.

That on, to-wit: the 5th day of April, 1923, said The Two Republics Life Insurance Company executed and delivered to the then State Bank Examiner of the State of New Mexico a certain document captioned "Assignment of Securities", a true copy whereof is hereto attached, marked "Exhibit F" and made by reference a part hereof, in and by which assignment it was the purpose and intent of the said The Two Republics Life Insurance Company, and of said State Bank Examiner to create a lien in favor of said State Bank Examiner in the sum of Thirty Thousand and no/100 Dollars (\$30,000.00), upon the payments by said Wallaces to be made, as vendees, and upon the lands aforesaid, as security for the holders of

registered policies of the National Life Insurance Company of the Southwest, pursuant to the requirements of said Section 38 of Chapter 48 of the Laws of 1909 (Exhibit A).

IX.

That thereafter, and on, to-wit: the 25th day of April, 1923, said The Two Republics Life Insurance Company, and the said Wallaces modified the executory contract aforesaid (Exhibit E), by a supplemental agreement, bearing said date, a true copy whereof is hereto attached, marked "Exhibit G" and made by reference a part hereof. [38]

X.

That thereafter, and on, to-wit: the 27th day of July, 1923, said The Two Republics Life Insurance Company made, executed and delivered to the then State Bank Examiner of the State of New Mexico another document, captioned "Assignment of Securities", a true copy whereof is hereto attached, marked "Exhibit H" and made by reference a part hereof, in and by which said assignment it was the purpose of the said The Two Republics Life Insurance Company and the said State Bank Examiner to confirm the lien aforesaid, and to fix its amount in the sum of Thirty-two Thousand Two Hundred Fifty-five and no/100 Dollars (\$32,255.00), as security aforesaid.

XI.

That thereafter, and on, to-wit the 15th day of May, 1924, for the purpose of facilitating and mak-

ing safer and more effective the lien aforesaid, and in compliance with the requirement of the then State Bank Examiner, said executory contract (Exhibit E) was again modified by a supplemental agreement, a true copy of which is hereto attached, marked "Exhibit I" and made by reference a part hereof; in and by which supplemental agreement the said State Bank Examiner was substituted as escrow holder in place of said Salt River Valley Trust & Savings Bank of Mesa, Arizona, and, pursuant to which said supplemental agreement (Exhibit I), said executory contract (Exhibit E), together with said supplemental agreements and said warranty deed and said quit claim deed were withdrawn from said Salt River Valley Trust & Savings Bank of Mesa, Arizona, and placed and deposited with said State Bank Examiner; and which said designation as escrow holder and said deposit were, by said State Bank Examiner, accepted in connection with, and to accomplish and effectuate the lien aforesaid, for the purpose and security aforesaid.

XII.

That thereafter, and on, to-wit: the 3rd day of March, 1928, said The Two Republics Life Insurance Company [39] sold and transferred all of its assets and business to the Mississippi Valley Life Insurance Company, a corporation then duly organized, existing and operating under the insurance laws of the State of Illinois, which said Mississippi Valley Life Insurance Company assumed all of the

liabilities and obligations of said The Two Republics Life Insurance Company, including the policies issued and registered, as aforesaid, by said National Life Insurance Company of the Southwest, under and pursuant to the provisions of said Section 38 of Chapter 48 of the Laws of 1909, which said transfer was, on the 4th day of June, 1928, placed of record in the office of the County Recorder of said County of Maricopa, State of Arizona, in Book 223 of Deeds, at page 74; and pursuant to, and in connection with which said transfer said The Two Republics Life Insurance Company executed and delivered to said Mississippi Valley Life Insurance Company a conveyance of the lands hereinbefore described, which said conveyance was, on June 4th, 1928, placed of record in the office of said County Recorder, in Book 223 of Deeds, at page 74, and which said conveyance, after being so recorded, said Mississippi Valley Life Insurance Company deposited with the then Superintendent of Insurance of the State of New Mexico to further effectuate, and as further evidence of the lien effected, and intended to be effected by said escrow contracts of said purchase and sale.

XIII.

That at the time of the transfer last aforesaid, said Wallaces' escrow contract of purchase and sale was held and listed by said Superintendent of Insurance as security, as aforesaid, and as a lien, as aforesaid, in the amount of Thirty-two Thousand

Two Hundred Fifty-five and no/100 Dollars (\$32,255.00), for the purpose aforesaid, all of which was well known to, and understood by the said Mississippi Valley Life Insurance Company. [40]

XIV.

That thereafter, and in the month of July, 1928, the said James Q. Wallace died, and said Grace V. Wallace was appointed and qualified as administratrix of the estate of said James Q. Wallace, and said Mississippi Valley Life Insurance Company, having acquired, as aforesaid, the legal title to the lands aforesaid, subject to the vendees' rights in said executory contract, and subject to the lien aforesaid for the security of the holders of registered policies, aforesaid, elected and agreed with said Grace V. Wallace, administratrix, as aforesaid, to continue and keep the said executory contract alive in the name and right of said administratrix, and was thereafter extended by Grace V. Wallace and Mississippi Valley Life Insurance Company for two years after January 16, 1931; and on March 18th, 1929, said Mississippi Valley Life Insurance Company made and delivered to said State Superintendent of Insurance, under the name and designation of State Bank Examiner, an "Assignment of Security", a true copy whereof is hereto attached, marked "Exhibit J", and made by reference a part hereof, the purpose and intent whereof was to confirm and renew the lien of security, aforesaid, in the amount of Thirty-two Thousand

and no/100 Dollars (\$32,000.00); and which said lien and security, as thus renewed and confirmed, was thereafter held and listed by said Superintendent of Insurance, and came, in such form, into the hands of your orator as Liquidating Receiver.

XV.

That thereafter, and on, to-wit: the 25th day of April, 1932, said Mississippi Valley Life Insurance Company became insolvent, and proceedings ensued by virtue of which the business and affairs of said insolvent corporation are now in the hands of defendants, the Receivers hereinbefore named, and its assets are in process of liquidation by said Receivers. [41]

XVI.

That on, to-wit: the 18th day of May, 1932, the then Receivers of the said Mississippi Valley Life Insurance Company entered into a contract, a copy whereof is hereto attached and marked "Exhibit K", with defendant Republic Life Insurance Company of Dallas, Texas, in and by which said defendant agreed to assume the policy obligations of said Mississippi Valley Life Insurance Company, including the aforesaid registered policies issued by the National Life Insurance Company of the Southwest, but charging against each policy so assumed a lien in the amount of the whole legal reserve thereon; but which said contract did not, as said Superintendent of Insurance understood the same, or was advised, effect or contemplate any

transfer of title to the lands aforesaid; and, as your orator is informed and believes, and alleges on such information and belief, there never was, or has been any transfer of title to said lands, except as hereinafter stated; and that defendant Republic Life Insurance Company of Dallas, Texas, entered into the contract aforesaid with full knowledge that said Superintendent of Insurance had, was entitled to and claimed a lien upon the lands aforesaid, in the amount and for the purposes aforesaid, as your orator is informed and believes, and alleges on such information and belief.

XVII.

That thereafter, and on August 22, 1932, one E. H. Banta, claiming to be the owner of the lands aforesaid by transfer of the escrow contract, aforesaid by Republic Life Insurance Company of Dallas, Texas, but who in fact had no legal or equitable title to said land or escrow contract, commenced suit in the Superior Court of Maricopa County, Arizona, against A. O. Pelsue, as Receiver of Mississippi Valley Life Insurance Company, appointed August 22, 1932, which suit resulted in a certain decree, dated August 22, 1932, adjudging said Banta to be the owner in fee simple of the lands aforesaid, and ordering said Receiver to execute to [42] said Banta a deed therefor, which said decree was thereafter recorded in the office of the County Recorder of Maricopa County, Arizona, in Book 267 of Deeds, at pages 349-50 thereof.

And that the said A. O. Pelsue, as such Receiver, did, on August 22, 1932, pursuant to said decree, execute to said Banta a certain quit claim deed conveying the said lands, which said deed is of record in the office of said County Recorder in Book 267 of Deeds, at pages 350-1 thereof.

That thereafter, and on September 10, 1932, defendant Republic Life Insurance Company of Dallas, Texas, executed and delivered to said Banta a warranty deed conveying the lands aforesaid, which deed is of record in the office of the County Recorder of Maricopa County, State of Arizona, in Book 267 of Deeds, at pages 550-51 thereof; and the Republic Life Insurance Company on said date had and owned no title to said property.

That on said September 10th, 1932, Grace V. Rowell, formerly Grace V. Wallace, and widow of James Q. Wallace, deceased, then wife of F. D. Rowell, (joined pro forma by her husband), individually and as administratrix of the Estate of James Q. Wallace, deceased, executed and delivered to said Banta a warranty deed purporting to convey the lands aforesaid, which deed is recorded in the office of the County Recorder of said County of Maricopa, State of Arizona, in Book 267 of Deeds, at pages 536-7 thereof; that said deed was delivered pursuant to a contract made on August 20, 1932, between said Grace V. Rowell of one part and defendant Republic Life Insurance Company of the other part, which recognized the escrow contract, but the contract of sale or deed was not authorized

by the court nor confirmed by the court, as in the statutes in such cases made and provided, and did not sell the interest of the estate or of the minor children, William H. Wallace and Anna Louise Wallace.

XVIII.

That the said E. H. Banta was on said date a Vice-President of defendant Republic Life Insurance Company of Dallas, [43] Texas, and that said Banta personally negotiated with the Receivers aforesaid the agreement (Exhibit K), brought the suit No. 37799 in the Superior Court of Maricopa County, Arizona, entitled Banta vs. Pelsue, aforesaid, and made the contract with Grace V. Rowell (formerly Grace V. Wallace), and had full knowledge and notice that the lands aforesaid were subject to the lien of the Superintendent of Insurance of the State of New Mexico for security, as aforesaid; and that said Superintendent of Insurance of the State of New Mexico had no knowledge or notice of, and was not a party to any of the various transactions, or the judgment aforesaid, by which said Banta procured for himself the various deeds aforesaid to said lands; and if the said Banta did thereby acquire legal title to the lands aforesaid, which plaintiff denies, such title is, in equity, subject to the lien aforesaid.

XIX.

That thereafter, and on March 13th, 1933, the said E. H. Banta executed and delivered to defend-

ant J. G. Vaughan a warranty deed conveying the lands aforesaid, which said deed is of record in the office of the County Recorder of Maricopa County, Arizona, in Book 272 of Deeds, at page 478; and, as your orator is informed and believes, and alleges on information and belief, defendant Vaughan was at said time an officer and employee of defendant Republic Life Insurance Company of Dallas, Texas, and had full knowledge and notice of the lien and right and claim of lien of said Superintendent of Insurance, and that defendant Vaughan took said title in trust for defendant Republic Life Insurance Company of Dallas, Texas, and thereupon executed and delivered to said defendant Republic Life Insurance Company of Dallas, Texas, a conveyance of said land which has been and is now withheld from record, and that defendant Republic Life Insurance Company of Dallas, Texas, claims to own said land and has since said date and since the filing of [44] this suit, and after demand made by plaintiff upon them for possession, obtained from J. G. Vaughan and his wife a deed to said property, which deed was filed for record in the Records of Maricopa County, Arizona, on the 12th day of April, 1938, and recorded in Book..... thereof, at page; and that thereafter the Republic Life Insurance Company transferred said property to R. L. Daniel, Chairman of the Board of the Insurance Commission of the State of Texas, and his successors in office, which deed was filed for record on April 12, 1938, and recorded in Book 321 of the

Deed Records of Maricopa County, Arizona, pages 317 and 318.

XX.

That defendant M. J. Dougherty, as your orator is informed and believes, and alleges on information and belief, has been, during the past three years, in possession of the lands aforesaid, living thereon, cultivating, using and enjoying the same, and claiming some interest therein, the nature and extent whereof is to your orator unknown, and that said defendant has, at all times, had full knowledge and notice of the lien and claim and right of lien of said Superintendent of Insurance.

XXI.

That plaintiff is informed and believes that by virtue of the deeds and transactions aforesaid, that Grace V. Rowell (formerly Grace V. Wallace) and the two minor children of James Q. Wallace, deceased, William H. Wallace and Anna Louise Wallace, who are minors, and R. L. Daniel, have and claim some interest in said property and are made parties so they may assert what rights they may have thereto, but whatsoever it may be, plaintiff says it is subject to the lien and claim of this plaintiff. That said property is the separate property of Grace V. Rowell, and for that reason her husband, F. D. Rowell, is not joined. That William H. Wallace and Anna Louise Wallace have no guardian and this suit involves their interest, so the

Court should appoint some suitable person as [45] guardian ad litem to represent them herein.

XXII.

That defendant Republic Life Insurance Company of Dallas, Texas, is not, and never has been licensed or authorized to do business in the State of New Mexico, and has never submitted to the jurisdiction or authority of said Superintendent of Insurance, nor of his predecessors in office, and has not at any time since its undertaking to assume the risks and liabilities of the Mississippi Valley Life Insurance Company, as aforesaid, including the said registered policies issued by the National Life Insurance Company of the Southwest, complied, or offered or pretended to comply with the requirements of said Section 38 of Chapter 48 of the Laws of 1909, or with Section 71-155 of the New Mexico Statutes Annotated, Compilation of 1929 (Exhibit D); and that since the insolvency of the said Mississippi Valley Life Insurance Company, as aforesaid, said Superintendent of Insurance has had no power to require defendant Republic Life Insurance Company of Dallas, Texas, to maintain a deposit of securities for the statutory purpose aforesaid, or to substitute other securities for any such as had become impaired in value or safety, and has been compelled to rely upon the securities in his hands at the date of such insolvency.

XXIII.

That said Superintendent of Insurance was not a party to either the aforesaid receivership proceedings in the State of Arizona, entitled Dougherty vs. Mississippi Valley Life Insurance Company, No. 37332, or the said suit in said State by E. H. Banta against said A. O. Pelsue as receiver, being No. 37799, both on the docket of the Superior Court of Arizona in and for Maricopa County; and, as your orator is informed and believes, and alleges on information and belief, said Superintendent of Insurance had no notice or knowledge thereof until, to-wit: November, 1935; nor any knowledge or notice [46] prior to said time that there had been an attempted surrender and merger of the interest of the Wallaces, as vendees, in said executory contract; nor of any of the other transactions hereinbefore set forth by means whereof said E. H. Banta and defendant Republic Life Insurance Company of Dallas, Texas, intended and attempted to subvert, circumvent and defeat the lien aforesaid; all of which were concealed from said Superintendent of Insurance, and all of which proceedings were void upon their face and cannot and do not affect the lien or claim of this plaintiff.

XXIV.

That your orator did by telegram on the 17th day of March, A. D. 1937, and again on or about the 13th day of April, A. D. 1937, through his attorney make a demand upon the defendant Republic Life In-

insurance Company of Dallas, Texas, for an acknowledgment and payment of the lien of the plaintiff, and demand for possession of the property, and said defendant did not reply to the first demand and refused the second demand made for the possession of the property.

XXV.

That as fully appears from the allegations foregoing, your orator is without remedy in the premises except in a court of equality, and will suffer irreparable loss and injury, that is to say, the complete loss of the said lien, unless afforded the relief herein prayed.

Wherefore, premises considered, may it please Your Honor to grant to your orator the following orders, judgments and decrees:

1. That the defendants, Republic Life Insurance Company of Dallas, Texas, H. B. Hershey, Receiver of Mississippi Valley Life Insurance Company, J. G. Vaughan and M. J. Dougherty are before the Court by their answers herein, and Joseph B. Thompson and William E. Caulfield, Receivers of the Mississippi Valley Life Insurance Company under the appointment in Missouri, [47] have filed a disclaimer, and a copy hereof will be duly served upon all of said defendants at the addresses shown on their respective appearances.

2. That the Court appoint a guardian ad litem to represent William H. Wallace and Anna Louise Wallace, and that subpoenas issue directed to Grace

V. Rowell and said guardian ad litem to appear and answer the allegations hereof.

3. That R. L. Daniel, Chairman of the Board of the Insurance Commission of the State of Texas, is a citizen and a resident of Austin, Travis County, Texas, and that process be issued for service outside the District of Arizona upon said R. L. Daniel, commanding him to appear and plead, answer or demur in said cause on a day certain to be designated by this Court, and directing that said order be served upon the defendant pursuant to the provisions of the United States Code Annotated, Section 118 of Title 28.

4. And your orator further prays that after hearing herein the Court render its decree declaring and establishing a lien in the nature of a mortgage, in favor of your orator, upon the lands hereinbefore described, and the appurtenances thereto, in the sum of Thirty-two Thousand and no/100 Dollars (\$32,000.00), and declaring and establishing such lien to be superior and prior to any and all interest or claim of each and all of the defendants; such lien to be had and held by your orator, as such Liquidating Receiver, as an asset of his said trust and to be enforced, applied and distributed as a security deposited pursuant to the provisions of said Section 38 of Chapter 48 of the Laws of New Mexico of the year 1909, for the security of the full legal reserve of policies of said National Life Insurance Company of the Southwest issued and registered thereunder.

5. And your orator further prays that, having declared and established such lien, the Court further decree the [48] amount thereof to be presently due and payable, and that unless the defendants, or some of them, pay off and satisfy the amount thereof within a time by such decree to be specified, your orator may and shall have foreclosure thereof, and that said lands be sold in the manner provided by law for the foreclosure of liens or mortgages on real estate, and according to the rules and practice of this Court for the satisfaction of said sum of Thirty-two Thousand and no/100 Dollars (\$32,000.00).

6. And your orator further prays for such other, further or different relief in the premises as to Your Honor may appear meet and equitable.

And your orator will ever pray, etc.

JOHN T. WATSON.

WILSON & WATSON,

Post Office Address:

Sena Plaza, Santa Fe,

New Mexico.

FRED C. KNOLLENBERG,

Post Office Address:

415 Caples Bldg.,

El Paso, Texas.

Attorneys for Orator.

State of New Mexico,
County of Santa Fe—ss.

John T. Watson, being first duly sworn according to law, says that he is the person named in, and

who signed the foregoing First Amended Bill of Complaint; that he has read the same and knows and understands the contents thereof, and that the allegations thereof are true of his own knowledge, except as to such thereof as are made on information and belief, and as to such allegations he believes them to be true.

JOHN T. WATSON.

Subscribed and sworn to, before me, this 9th day of June, A. D. 1938.

[Notarial Seal] ANNABELLE K. DAVIS,
(formerly Annabelle Kennedy)
Notary Public.

My commission expires: July 10, 1938. [49]

EXHIBIT A

SESSION LAWS OF NEW MEXICO
1909
CHAPTER 48

Section 38. Any life insurance company now or hereafter organized in this Territory may register any of its policies with the insurance department and deposit with the Superintendent of Insurance, approved securities to the amount of not less than the net value of all such policies registered and said policies shall bear upon their face a certificate in the following words:

“Insurance Department, Territory of New Mexico. This policy is registered with this department and the full legal reserve thereon is

secured by approved securities on deposit with the Superintendent of Insurance in the Territory of New Mexico as provided by Law.”

Which certificate shall be signed by the Superintendent of Insurance or his authorized deputy and sealed with the seal of his office.

These policies shall be known as “Registered Policies” and said Superintendent of Insurance shall prepare and keep such register thereof as will enable him to compute their value at any time:

Provided, That all companies registering any policies under this act shall at all times keep the amount of securities on deposit with the Superintendent of Insurance equal to the amount of the legal reserve under such policies then in force;

Provided, That the Superintendent of Insurance shall make a charge of fifty cents for affixing the seal of his office and registering any such policies.

EXHIBIT B

State of New Mexico,
County of Santa Fe

In the District Court

No. 14,867

RICHARD C. DILLON for Himself and Others
Similarly Situated,

Plaintiff,

vs.

GEORGE M. BIEL, (Substituted for Max Fernandez), Superintendent of Insurance of the State of New Mexico; JOSEPH B. THOMPSON and WILLIAM B. CAULFIELD, Receivers of Mississippi Valley Life Insurance Company, a Corporation, Appointed by the Circuit Court of the City of St. Louis, Missouri; H. B. HER-SHEY (substituted for Alvin S. Keys) Receiver of Said Mississippi Valley Life Insurance Company Under Order of the Circuit Court of Sangamon County, Illinois; and REPUBLIC LIFE INSURANCE COMPANY OF DALLAS, TEXAS, a Corporation,
Defendants.

ORDER

The Court having been advised by John T. Watson Referee and Receiver herein, that the services of Fred C. Knollenberg, Attorney at Law, have been secured in accordance with the order entered

herein on February 2nd, and as evidenced by the memorandum agreement filed herein; and it appearing to the Court that the assets now in the hands of the Receiver are insufficient to pay all claims now filed or to be filed herein; and it further appearing that it is to the best interests of the policy-holders and claimants in this Receivership to immediately file suit against the present claimants and holders of the tract of land known as the Wallace property and more fully described in the Report of John T. Watson, Receiver, as item seven, said property being described as the Southeast Quarter, Section 19, Township 1 North, Range 6 East of the Gila and Salt River Base and Meridian of Maricopa County, Arizona.

It Is Therefore Ordered and Decreed that John T. Watson Receiver herein forthwith proceed with suit in the Arizona State or Federal courts after first having obtained and received permission from said Court to bring action to establish the lien, rights, interest or title in and to said property in his name as Receiver for the benefit of the policy-holders and claimants herein.

(Signed) DAVID CHAVEZ, JR.,

District Judge. [51]

EXHIBIT C
ASSIGNMENT

Know All Men by These Presents, that the undersigned George M. Biel, duly appointed, qualified and acting Superintendent of Insurance of the

State of New Mexico, for a good and valuable consideration, has assigned and transferred and by these presents does assign, transfer and set over unto John T. Watson, Liquidating Receiver, duly appointed, qualified and acting by and pursuant to and under an order of the District Court of the County of Santa Fe, State of New Mexico, in a certain cause therein pending, being Number 14867 on the Civil Docket of said Court wherein one Richard C. Dillon is plaintiff and the undersigned, Superintendent of Insurance as aforesaid is, among others, a defendant, all of the right, title and interest of the undersigned in and to the following described lands, situate and being in the County of Maricopa, State of Arizona, to-wit:

The Southeast Quarter (SE $\frac{1}{4}$) of Section Nineteen (19) Township One (1) North of Range Six (6) East of the Gila and Salt River Base and Meridian.

It is expressly understood that the interest hereby transferred is a lien upon the lands aforesaid in the nature of a mortgage created and existing by and through the deposit of certain documents by the Two Republics Life Insurance Company of El Paso, Texas, and thereafter by Mississippi Valley Life Insurance Company an Illinois corporation, with the Undersigned in his capacity as Superintendent of Insurance for the security of the full legal reserve of policies of insurance issued by National Life Insurance Company of the Southwest

and registered pursuant to the provisions of Section 38, Chapter 48 of the Laws of New Mexico of the year 1909, and that the purpose of this assignment is to invest the assignee, Liquidating Receiver as aforesaid, with full power and authority to sue for and recover said lien and to have the same established and enforced by foreclosure or otherwise for the purpose of realizing upon the same for the security of such policy-holders, and to that end the undersigned does hereby invest said assignee with every power which the undersigned had in the premises prior to the commencement of said Cause No. 14867.

In Witness Whereof, the assignor has hereunto set his hand and seal this 18th day of March, 1937.

(Sgd.)

GEORGE M. BIEL,

Superintendent of Insurance
of the State of New Mexico.

[52]

State of New Mexico,
County of Santa Fe—ss.

On this 18th day of March, 1937, personally appeared before me George M. Biel, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same in his capacity as Superintendent of Insurance of the State of New Mexico, as his free act and deed.

In Witness Whereof, I have hereunto signed my name and affixed my notarial seal the day and year in this acknowledgment first above written.

[Seal] (Sgd.) COSME R. GARCIA,
Notary Public.

My Commission Expires: July 26, 1939. [53]

EXHIBIT D
NEW MEXICO
COMPILED LAWS OF 1929
SECTION 71-155

Registered Policies. When any policies have heretofore been registered with the insurance department of the state of New Mexico or with the office of the bank examiner under the conditions of section 38, chapter 42 (Rep.), of the session laws of the year 1909, it shall be the duty of the superintendent to maintain a register of such policies in a form that will enable him to compute the net value of such policies at any time, and it shall be the duty of each company having any such registered policies in force to semi-annually supply the superintendent with a certified list of the net value of all such registered policies in force as at that date, and to at all times maintain approved securities of one of the kinds authorized as an investment for any insurance company with the corporation commission of an amount equal to the said net value, and whenever it be shown that the amount of said securities so on deposit is in excess of the net value

of the registered policies of such company the amount of such excess shall be immediately released and delivered to the company; Provided, that in computing the net value of any policies so registered credit shall be allowed on each policy for the amount of any outstanding policy loan or lien secured exclusively by the cash or loan values of said policy. (L. '25, ch. 135, Sec. 55.) [54]

EXHIBIT E
AGREEMENT

This Agreement, made and entered into this 16th day of January, 1923, between The Two Republics Life Insurance Company, a corporation organized and existing under the laws of the State of Texas with its principal place of business at El Paso, Texas, the party of the first part, and James Q. Wallace and Grace V. Wallace, parties of the second part.

Witnesseth:

That the said party of the first part in consideration of the covenants and agreements on the part of the said parties of the second part, herein contained, agrees to sell and convey unto said parties of the second part, and said parties of the second part agree to buy, all that certain lot, tract and parcel of land situate in the county of Maricopa,

State of Arizona bounded and described as follows, to-wit:

The Southeast Quarter (SE $\frac{1}{4}$) of Section Nineteen (19) Township One (1) North of Range Six (6) East of the Gila and Salt River Base and Meridian.

For the sum of thirty-two thousand two hundred fifty-five (\$32,255.) Dollars, gold coin of the United States; and the said parties of the second part, in consideration of the premises, agree to pay to the said party of the first part the sum of Thirty-two Thousand Two Hundred Fifty-five (\$32,255.00) Dollars, in United States gold coin as follows, to-wit:

\$ 1,000.00 January 16th, 1924,
\$ 1,000.00 January 16th, 1925,
\$ 1,500.00 January 16th, 1926,
\$ 1,500.00 January 16th, 1927,
\$27,255.00 January 16th, 1928,

All deferred payments to bear interest at the rate of 6% per annum payable annually and if not so paid to be added to the principal and bear interest at the same rate.

And the said parties of the second part hereby covenant and agree with the said party of the first part, its successors and assigns, as follows:

To pay all state, city and county taxes and assessments of whatever nature which are, or may become due on the premises above described, and if not paid, that the said party of the first part may pay

such taxes, liens or assessments and be entitled to interest on the same at the rate of 6% per annum.

To keep all buildings, fences and other improvements on said real estate in as good repair and condition as the same are in at this time, and to permit no waste.

To keep the buildings on said premises insured in some fire insurance company, paying all charges therefor, in the name of the Two Republics Life Insurance Company. In case of failure [55] to keep said buildings so insured and deliver the policy to the party of the first part, as agreed, said party of the first part may effect such insurance, and the amount so paid, with 6% per annum, shall be immediately due and payable by the said parties of the second part.

To purchase and pay for all irrigation water used upon said premises, and all water assessments which may be made thereon, as the same become due and payable, and in case of failure of the second parties to purchase and pay for said water and assessments said party of the first part may purchase and pay for the same, and the amount so paid with interest at 6% per annum shall be immediately due and payable by the said parties of the second part.

To enter upon said premises and begin the farming thereof forthwith, and to farm said premises in a first class manner according to the rules of good husbandry.

To keep said premises and the roadway adjacent thereto reasonable clear of all Johnson grass and other obnoxious weeds.

To keep all ditches, laterals and borders upon said premises clean and in good condition for efficient use.

To re-pay to first party any proper and necessary sums paid by it to satisfy any established and existing liens against said premises said sums so paid by first party to be added to the principal herein and to bear interest at the rate of 6% per annum.

It is agreed that all sums herein provided to be paid by second parties to first party, the time or times of payment for which are not herein specifically fixed shall become due and payable on the 16th day of January, 192...

The parties of the second part agree to execute to the party of the first part a Quit Claim Deed, in form satisfactory to first party, for the premises above described, which Quit Claim Deed shall be placed in escrow with the Salt River Valley Trust & Savings Bank, Mesa, Arizona, under the terms and provisions hereinafter provided.

The party of the first part agrees to execute to the parties of the second part a Warranty Deed for the premises herein described, and to place the same, together with said Quit Claim Deed from second parties to first party hereinabove mentioned, and said promissory notes, and a copy of this agreement, in escrow with the Salt River Valley Trust & Savings Bank Mesa, Arizona, to be held by said Bank until the performance of this agreement, by the parties of the second part shall have been made in full and then said escrow holder shall deliver

said Warranty Deed and said Quit Claim Deed to the parties of the second part.

It is further agreed between the parties hereto that if the second parties shall fail or make default in any of their promises or agreements herein contained in the manner and at the time herein provided to be performed by them, and shall remain in default for a period of ten (10) days, such failure or default shall, at the option of first party, terminate this agreement, and all payments made hereunder and all improvements made upon [56] said premises and crops growing thereon, shall be considered as liquidated damages, and shall belong to the party of the first part, free and clear of all claims, charges and demands of the second parties.

In the event of the failure of the second parties to perform their covenants and agreements hereon contained in the manner and at the time herein prescribed, the said escrow holder shall re-deliver said Warranty Deed, together with the copy of this agreement held by it, and said Quit Claim Deed above mentioned, to first party upon its demand in writing and shall return to the second parties all notes accompanying this agreement remaining unpaid at the date of return of said Warranty Deed and other papers above mentioned, and the said escrow holder shall thereupon become relieved of all duties and liabilities arising under this contract; and the said parties hereto, for the purpose herein mentioned, hereby constitute and appoint the said escrow holder their agent for the purpose of per-

forming the duties of escrow holder herein provided.

The various remedies herein given to the party of the first part shall be cumulative and not restrictive, and the exercise of any one remedy by said party of the first part, shall not be construed to deprive it of the right to exercise any other remedy herein provided, or which may exist by the laws of the State of Arizona.

It is further understood and agreed by and between the parties hereto that no assignment of this contract, or any interest therein, will be of any force or effect, unless the assignee or assigns, shall make, execute and deliver to The Salt River Valley Trust & Savings Bank Mesa, Arizona, escrow holder herein their Quit Claim Deed, in form satisfactory to first party, conveying to the first party the premises hereinbefore described and a copy of said assignment; and in case the said assignee or assigns of said interest of second parties in said contract shall fail, neglect or refuse to carry out each and every promise and agreement on the part of the second parties herein contained within the time herein limited, and strictly as herein provided, then and in that event the said escrow holder is instructed and directed to deliver said Quit Claim Deed together with said other papers to the party of the first part upon demand, as hereinbefore provided.

Time is the essence of this contract, and the terms conditions and provisions hereof shall extend to and be binding upon the heirs, executors, administrators and lawful assigns of each of the parties hereto.

In Witness Whereof, the said party of the first part has caused these presents to be executed by its President and Secretary and its corporate seal hereunto annexed, and the second parties have hereunto set their hands and seals the day and year first above written.

(Sgd.) JAMES Q. WALLACE,

(Sgd.) GRACE V. WALLACE,

[Seal] THE TWO-REPUBLICS
LIFE INS. CO.,

(Sgd.) A. H. RODES, Pres.

(Sgd.) JOHN H. UPTON, Secy. [57]

State of Arizona,
County of Maricopa—ss.

On this 5th day of March, 1923, before me personally appeared James Q. Wallace and Grace V. Wallace, his wife, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this the 5th day of March, 1923.

[Seal] (Sgd.) M. J. DAUGHERTY,

Notary Public.

My Commission Expires Feb. 26th, 1924.

State of Texas,
County of El Paso—ss.

On this the 30th day of April, A. D. 1923, before me appeared A. H. Rodes, Pres. and John H. Upton, Secy., both to me personally known, who, being by me duly sworn, did say that they are respectively the President and Secretary of the Two Republics Life Insurance Company, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors; and the said A. H. Rodes, Pres. and John H. Upton, Secy., acknowledged said instrument to be the free act and deed of said corporation.

Given under my hand and the seal of my office at El Paso, in El Paso County, Texas, this 30th day of April A. D. 1923.

[Seal] (Sgd.) IRENE STEWARD,
Notary Public.

My Commission Expires: May 31st, 1923. [58]

EXHIBIT F

ASSIGNMENT OF SECURITIES

No. 1

Whereas The National Life Insurance Company of the Southwest, of Albuquerque, New Mexico, a life insurance company organized and doing busi-

ness in this State, has registered its policies with the Insurance Department and has deposited with such Department approved securities to an amount of not less than the net value of all policies so registered; and whereas such securities, while so on deposit, and the proceeds thereof, may be used by the state of New Mexico for the purpose of fully protecting any and all holders of policies so registered, and all obligations to the State in this connection.

Therefore, said Company by its successor, The Two-Republics Life Insurance Company of El Paso, Texas, first party, hereby and herewith, in consideration of the foregoing, sells, assigns, and transfers to the State of New Mexico, second party, all the rights, title, and interest of first party in and to the securities now on deposit as aforesaid, described as follows, to-wit:

No.	Name	Amount	Date Due
8	Gray	\$ 5,000	10- 5-22
9	Beck	3,000	10- 1-22
10	Gonzales	2,000	10- 1-21
12	Gibson	3,500	10- 8-22
14	Smith Realty Co.	7,500	8-15-23
25	Martin	10,000	2-16-23
23	Fitzgerald	10,000	1-29-23
26	Milbourn	2,500	2-18-23
32	Jaffe Praeger	15,000	12-1-24
33	Newson	3,300	12-17-24
36	Cunningham	7,000	12-15-24
38	Albright	8,840	4-25-23
39	Wallace, J. R.	22,000	Process of Transfer
40	Wallace, J. Q.	30,000	Process of Transfer
41	Hardwick	12,500	9-13-25

No.	Name	Amount	Date Due
42	Medley	\$ 5,000.00	10-15-25
43	Geer	5,000	11-24-25
44	Power	13,000	12- 9-25
54	Power	5,000	11-18-25
46	Porter	5,000	12- 9-25
53	Porter	2,500	11-29-23
55	Stauts	1,300	12- 9-24
59	Fox	6,000	6- 1-27
60	Jenkins	6,000	6- 3-27
65	Texier	5,000	8-15-27
72	Berry	2,500	9-26-25
73	McGee	8,000	9-27-25
74	Hubbel	3,500	10- 8-25
Total		\$209,940	

Said second party to have and to hold said securities for the purpose of satisfying just claims of any policy holder in case of possible default of said first party in the matter of satisfying the same, and for all the purposes hereinbefore mentioned. [59]

Whenever, in the opinion of the State Bank Examiner it may be proper or necessary for said Company to withdraw any or all of said securities from deposit, he may permit such withdrawal, executing an assignment back to said first party in the name of the State Bank Examiner.

Whenever, in the opinion of the State Bank Examiner, any security or securities are about to become barred by statute, doubtful as to sufficiency or other reason, the State Bank Examiner, by letter, may tender back to said first party such security or securities, whereupon it shall be necessary for first party to furnish forthwith other or addi-

tional approved security in lieu of all such securities so tendered back.

In witness whereof, said first party has officially signed and affixed its seal in duplicate this 5th day of April, 1923.

THE TWO-REPUBLICS
LIFE INSURANCE CO.,
First Party.

By (Sgd.) A. H. RODES,

President.

Attest:

(Sgd.) JOHN H. UPTON.

State of New Mexico,
County of Santa Fe—ss.

Received above securities the day of,
19....., for the purpose specified herein. [60]

.....

EXHIBIT G

This Supplemental Agreement, made this 25th day of April, 1923, between The Two-Republics Life Insurance Company, a corporation, organized and existing under the laws of the State of Texas, with its principal place of business at El Paso, Texas, the party of the first part, and James Q. Wallace and Grace V. Wallace his wife, parties of the second part, Witnesseth:

That whereas the parties hereto did on the 16th day of January, 1923, enter into an agreement for

the purchase and sale of the following described premises, to-wit:

The Southeast Quarter (SE $\frac{1}{4}$) of Section Nineteen (19) Township One (1) North of Range Six (6) East of the Gila and Salt River Base and Meridian, Maricopa County, State of Arizona.

And whereas the parties hereto are desirous of providing for the payment of 8% interest on water and tax assessments and any other liens against said premises which are assessed and become due and payable hereafter and which are not now assessed, due or payable.

Now therefore, it is agreed that said Paragraphs II and III of said Page II, of said contract of January 16th, 1923, be, and the same is hereby amended to read as follows:

“And the said parties of the second part hereby covenant and agree with the said party of the first part, its successors and assigns, as follows:

To pay all State, City, and County taxes and assessments of whatsoever nature which are, or may become due on the premises above described and if not paid that the party of the first part may pay such taxes, liens or assessments and be entitled to interest on the same at the rate of 6% per annum. Provided, however, that party of the first part shall be entitled to interest at the rate of 8% per annum upon all such taxes, liens or assessments which it may be obliged to pay on taxes, liens or assessments

which are not now due or payable but which may hereafter be assessed and become due and payable, and provided further that as to taxes, assessments and liens which are now due and payable, and which first party agrees and contemplates paying, said interest at the rate of 6% per annum shall apply.

It is further agreed that said agreement of January 16, 1923, shall stand in all respects except as expressly modified herein.

In Witness Whereof the parties have hereunto set their hands and seals the day and year first above written.

(Sgd.) JAMES Q. WALLACE,

(Sgd.) GRACE V. WALLACE.

[Seal]

THE TWO-REPUBLICS
LIFE INSURANCE CO.

By (Sgd.) A. H. RODES,

Pres.

Attest:

(Sgd.) E. L. CORIELL,

Assistant Secretary. [61]

State of Arizona,
County of Maricopa—ss.

On this 26th day of April, 1923, before me personally appeared James Q. Wallace and Grace V. Wallace his wife, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed

the same for the purposes and consideration therein expressed.

Given under my hand and seal of my office this the 26th day of April, 1923.

[Seal] (Sgd.) M. J. DAUGHERTY,
Notary Public.

My Commission Expires, February 26, 1924.

State of Texas,
County of El Paso—ss.

On this the 30th day of April, A. D. 1923, before me appeared A. H. Rodes and E. L. Coriell both to me personally known, who, being by me duly sworn, did say that they are respectively the President and Assistant Secretary of the Two-republics Life Insurance Company, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors; and the said A. H. Rodes and E. L. Coriell acknowledged said instrument to be the free act and deed of said corporation.

Given under my hand and the seal of my office at El Paso, in El Paso County, Texas, this 30th day of April, A. D. 1923.

(Sgd.) IRENE STEWART,
Notary Public.

My Commission Expires May 31st, 1923. [62]

EXHIBIT H

ASSIGNMENT OF SECURITIES

No. 5

Whereas The National Life Insurance Company of the Southwest, of Albuquerque, New Mexico, a life insurance company organized and doing business in the State, has registered its policies with the Insurance Department and has deposited with such Department approved securities to an amount of not less than the net value of all policies as registered, and whereas, such securities, while so on deposit, and the proceeds thereof, may be used by the State of New Mexico for the purpose of fully protecting any and all holders of policies so registered, and all obligations to the State in this connection.

Therefore, said Company by its successor, The Two-Republics Life Insurance Company of El Paso, Texas, first party, hereby and herewith, in consideration of the foregoing, sells, assigns, and transfers to the State of New Mexico, second party, all the right, title, and interest of first party in and to the securities enclosed herewith, described as follows, to-wit:

No.	Name	Amount	Date Due
40	James Q. Wallace	\$33,255.00	January 16th, 1928
39	John R. Wallace	\$25,340.75	January 1st, 1928
	R. P. Woodson, Jr.	\$16,000.00	January 5th, 1931

Said second party to have and to hold said securities for the purpose of satisfying just claims of any

policy holder in case of possible default of said first party in the matter of satisfying the same, and for all the purposes hereinbefore mentioned.

Whenever, in the opinion of the State Bank Examiner, it may be proper or necessary for said Company to withdraw any or all of said securities from deposit, he may permit such withdrawal, executing an assignment back to said first party in the name of the State by the State Bank Examiner.

Whenever, in the opinion of the State Bank Examiner, any security or securities are about to become barred by statute, doubtful as to sufficiency or other reason, the State Bank Examiner, by letter, may tender back to said first party such security or securities, whereupon it shall be necessary for first party to furnish forthwith other or additional approved security in lieu of all such securities so tendered back.

In witness whereof, said first party has officially signed and affixed its seal in duplicate this 27th day of July, 1923.

THE TWO-REPUBLICS LIFE
INSURANCE COMPANY,

First Party,

By A. H. RODES,

Vice-President.

Attest:

JOHN H. UPTON,

Secretary.

State of New Mexico,
County of Santa Fe—ss.

Received above securities the 31st day of July,
1923, for the purpose specified herein.

WALTER B. WAGNER,

Deputy for Insurance. [63]

EXHIBIT I

This Agreement, made and entered into this 15th day of May, 1924, between the Two-Republics Life Insurance Company, a corporation, party of the first part, and James Q. Wallace and Grace V. Wallace, parties of the second part.

Witnesseth:

Whereas, the parties hereto did on the 16th day of January, 1923, enter into an agreement whereby the party of the first part agreed to sell to the parties of the second part certain real estate situated in the County of Maricopa, State of Arizona, and

Whereas, it was provided in said contract that certain deeds and notes were to be executed and placed in escrow with the Salt River Valley Trust & Savings Bank, of Mesa, Arizona, under certain terms and conditions more specifically set out in said contract between the parties thereto:

Now Therefore, in consideration of the mutual covenants and agreements herein contained, and the considerations expressed in the prior contract re-

ferred to, it is now understood and agreed between the parties hereto that the escrow agent named in said contract of January 16th, 1923, be released from all further responsibility in connection with the said escrow arrangement and in lieu thereof the parties hereto designate Mr. Walter B. Wagner, Deputy for Insurance of the State of New Mexico, and his successor or successors in office, as the escrow agent with whom shall be deposited all the papers now on deposit with the Salt River Valley Trust & Savings Bank, of Mesa, Arizona, to be governed in all respects by the same terms and conditions set out in said contract of January 16th, 1923, which said contract is not modified in any respect other than the change of the escrow agent named in said contract and the consent of the parties of the second part, hereby given, to the deposit with the Superintendent of Insurance of the securities referred to in said contract of January 16th, 1923.

In Witness Whereof, said parties hereto caused these presents to be executed the day and year in this instrument first above written.

[Seal] THE TWO-REPUBLICS LIFE
INSURANCE COMPANY,

By (Sgd.) A. H. RODES,

President.

(Sgd.) JAMES Q. WALLACE,

(Sgd.) GRACE V. WALLACE,

Attest:

(Sgd.) HARRY W. LACKLAND,

Secretary.

State of Texas,
County of El Paso—ss.

On this the 15th day of May, A. D. 1924, before me appeared A. H. Rodes, President and Harry W. Lackland, Secretary, both to me personally known, who, being by me duly sworn, did say that they are respectively the President and Secretary of the Two-Republics Life Insurance Company, and that the seal affixed to the foregoing [64] instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors; and the said A. H. Rodes, President and Harry W. Lackland, Secretary, acknowledged said instrument to be the free act and deed of said corporation.

Given under my hand and the seal of my office at El Paso, Texas, in El Paso County, this the 15th day of May, A. D. 1924.

[Seal] (Sgd.) IRENE STEWART,
Notary Public in and for El Paso County, Texas.

My Commission Expires: May 31, 1925.

State of Arizona,
County of Maricopa—ss.

On this 9th day of June, A. D. 1924, before me personally appeared James Q. Wallace and Grace V. Wallace, his wife, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed

the same for the purpose and consideration therein expressed.

Given under my hand and seal of office this the 9th day of June, 1924.

[Seal] (Sgd.) M. J. DAUGHERTY,

Notary Public.

My Commission Expires: February 25th, 1928.

[65]

EXHIBIT J

CERTIFICATE OF ATTORNEY GENERAL OF THE STATE OF NEW MEXICO

I, Frank H. Patton, hereby certify that I am the duly elected, qualified and acting Attorney General of the State of New Mexico; that securities attached hereto amounting to \$32,000.00 on the SE $\frac{1}{4}$ of Section 19, Township 1, of Range 6 East of the Gila and Salt River Base and Meridian, were deposited with the Department of Insurance of the State of New Mexico in compliance with the law of this State, to-wit:

Section 38, Chapter 48, Laws of 1909 and Section 71-155 of New Mexico Statutes Annotated, 1929 Compilation by the Mississippi Valley Life Insurance Company;

that said Department of Insurance of the State of New Mexico is still holding said securities for the benefit of registered policy holders, and the same have not been recorded or released by me.

Dated this the 13th day of February, A. D. 1935,
at Santa Fe, Santa Fe County, New Mexico.

(Sgd.) FRANK H. PATTON,
Attorney General.

State of New Mexico,
County of Santa Fe.

Before me, the undersigned, a Notary Public in and for the County of Santa Fe, State of New Mexico, on this day personally appeared Frank H. Patton, Attorney General of the State of New Mexico, known to me to be the person whose name is subscribed to the foregoing instrument, and he acknowledged to me that he executed the same for the purposes and consideration therein expressed; and being duly sworn did say that the matters and things in the foregoing certificate are true.

Given under my hand and seal of office, this 18th day of February, A. D. 1935.

[Seal] (Sgd.) HELEN CLANCY,
Notary Public in and for Santa Fe County, New Mexico.

My Commission Expires: 12-27-36. [66]

ASSIGNMENT OF SECURITIES

Whereas The National Life Insurance Company of the Southwest, of Albuquerque, New Mexico, a life insurance company organized and doing business in this State, has registered its policies with the Insurance Department and has deposited with

such Department approved securities to an amount of not less than the net value of all policies so registered; and whereas such securities, while so on deposit, and the proceeds thereof, may be used by the State of New Mexico for the purpose of fully protecting any and all holders of policies so registered, and all obligations to the State in this connection.

Therefore, said Company by its successor, Mississippi Valley Life Insurance Company of Madison, Madison Co., Illinois, first party, hereby and herewith, in consideration of the foregoing, sells, assigns, and transfers to the State of New Mexico, second party, all the right, title, and interest of first party in and to the securities enclosed herewith, described as follows, to-wit:

No.	Name	Amount	Date Due
40	Mrs. James Q. Wallace Admx. of Estate of James Q. Wallace	\$32,000.00	1/16/31

Said second party to have and to hold said securities for the purpose of satisfying just claims of any policy holder in case of possible default of said first party in the matter of satisfying the same, and for all the purposes hereinbefore mentioned.

Whenever, in the opinion of the State Bank Examiner, it may be proper or necessary for said Company to withdraw any or all of said securities from deposit, he may permit such withdrawal, executing an assignment back to said first party

in the name of the State by the State Bank Examiner.

Whenever, in the opinion of the State Bank Examiner, any security or securities are about to become barred by statute, doubtful as to sufficiency or other reason, the State Bank Examiner, by letter, may tender back to said first party such security or securities, whereupon it shall be necessary for first party to furnish forthwith other or additional approved security in lieu of all such securities so tendered back.

In witness whereof, said first party has officially signed and affixed its seal in duplicate this 18th day of March, 1929.

[Seal] MISSISSIPPI VALLEY LIFE
 INSURANCE COMPANY,

By (Sgd.) J. N. MITCHELL,
 Vice-President.

Attest:
 (Sgd.) H. O. JAMES,
 Asst. Secretary. [67]

EXHIBIT K

AGREEMENT BETWEEN REPUBLIC LIFE
INSURANCE COMPANY AND RECEIV-
ERS OF THE MISSISSIPPI VALLEY
LIFE INSURANCE COMPANY.

This Agreement, made and entered into this 18th day of May, 1932, by and between Republic Life

Insurance Company of Dallas, Texas, party of the first part, and Joseph B. Thompson and William E. Caulfield, Receiver of the Mississippi Valley Life Insurance Company, a corporation, appointed by the Circuit Court of the City of St. Louis, Missouri, and Alvin S. Keys, Receiver of the said Mississippi Valley Life Insurance Company, under authority of the Circuit Court of Sangamon County, Illinois, parties of the second part,

Witnesseth:

1. Party of the first part agrees to assume as herein set out liability to insured and/or beneficiary on all policies known as ordinary life policies from and after noon central standard time May 16, 1932, issued by the Two Republics Life Insurance Company or National Life Insurance Company of the Southwest, and assumed by said Mississippi Valley Life Insurance Company, on which there are at said time no claims by death or disability and on which there is no default in premium prior to April 1, 1932, and on all ordinary life policies issued by said Mississippi Valley Life Insurance Company direct on which there are at said time no claims by death or disability and on which there is no default in premium prior to April 1, 1932.

2. Party of the first part shall be subrogated to the claims under all policies against the estate of Mississippi Valley Life Insurance Company on which the policy holders accept this assumption of insurance and may file a claim therefor in the re-

ceivership in the Circuit Court of Sangamon County, Illinois, transferred from the Circuit Court of Madison County, Illinois, and in the Circuit Court of the City of St. Louis, Missouri, and shall apply any sums received under such claims to the benefit of any such policy holder in the form of reduction of the amount of lien hereinafter provided for against such policies.

3. As part of the consideration for this contract there shall be established and placed against each policy on which liability is assumed hereunder by party of the first part, a lien equal to 100% of the legal reserve thereon on the basis established and carried on the books and records of said Mississippi Valley Life Insurance Company, on the date to which premium has been paid to said Mississippi Valley Life Insurance Company, plus mortality rate from May 16, 1932, to date such premium is paid, such lien to bear interest at the rate of 6% per annum compounded annually, to be treated as a policy loan. Both lien and interest shall be deducted from any payment made by party of the first part and from any settlement thereunder or from the value used to purchase any paid-up or continued insurance.

On all policies which are secured by deposit with the Insurance Department of the State of New Mexico, the party of the first part shall be entitled to receive from said Insurance Department of the State of New Mexico, securities now on deposit to

the value of the reserve of the policies on which said party of the first part assumes liability hereunder and the policy holders accept such assumption, and said party of the first part shall, with the consent of the Insurance Department of the State of New Mexico, be entitled to have said reserves credited to it in such manner as the Insurance Department of the State of New Mexico shall approve, and said Alvin S. Keys, Receiver, shall be entitled to the reserves on deposit with the said Insurance Department of [68] the State of New Mexico, in excess of the claims which are against the said deposits. The lien on any such policy shall be reduced by the amount credited to or received by, said party of the first part from said deposit with said Insurance Department of the State of New Mexico on account thereof.

4. Party of the first part agrees that it will offer to the holder of any such policy term insurance at net cost to the extent of such lien so that each such policy holder may by carrying term insurance make available the full face of said policy in case of death.

5. The reinsurance and assumption of obligations herein provided for are further subject to the conditions, limitations and agreement that for a period of five years from the date as of which this contract becomes effective cash loans, except that part of the loan value that is applied to the payment of premiums on the policy, on which the loan

is made, and cash surrender values, shall not be available to such policy holders.

6. Party of the first part assumes no liability of any nature, on any claim on the policies herein reinsured, which shall originate prior to noon, central standard time, May 16th, 1932.

7. Said Jos. E. Thompson and William E. Caulfield, Receivers, parties of the second part agree to transfer and deliver to said party of the first part all cards, files, records and cabinets containing same pertaining to said policies, and mechanical equipment necessary for the keeping thereof, now in St. Louis, Missouri, as designated heretofore by list given said Thompson and Caulfield, Receivers, and said party of the first part agrees to pay said Thompson and Caulfield, Receivers, a sum to be fixed by the Circuit Court of the City of St. Louis, as the value thereof.

8. The holder of any such policies now defaulted for nonpayment of premium may within one year after said default, subject to lien of proper amount of reserve, upon evidence satisfactory to said party of the first part, of the health and insurability of the insured have said party of the first part assume liability on such policy from the date of reinstatement forward, provided on policies where default is not prior to April 1, 1932, insurance will attach from May 16, 1932, at noon, Central Standard Time, to be void unless premium be paid on or before June 15, 1932.

9. Party of the first part hereby constitutes the Superintendent of Insurance of the State of Missouri, its attorney in fact for it and in its name to accept service of process in any court in the State of Missouri, on account of any policy wherein the insured is now a resident of the State of Missouri, and constitutes the Director of Trade and Commerce of the State of Illinois its attorney in fact for it and in its name to accept service of process in any court in the State of Illinois on account of any policy wherein the insured is now a resident of the State of Illinois.

10. Party of the first part on or before August 31, 1932, agrees to furnish to parties of the second part a computation of the reserve on each policy on which it assumes liability hereunder as of April 25th, 1932, plus the proportionate part of any unexpired premium in order to furnish the amount of the claim under such policy and to furnish a separate computation with the same information on all policies for which it receives the cards, the holders of which do not accept or receive insurance under the terms hereof. [69]

11. Said parties of the second part shall at all reasonable times have access to any records received by party of the first part for any purpose necessary in the administration of said receiverships.

In Witness Whereof, said parties have executed these presents the year first above mentioned.

REPUBLIC LIFE
INSURANCE COMPANY,

By E. H. BANTA,

Vice-President.

Attest:

CLARENCE SIBLEY,

Secretary.

JOS. B. THOMPSON,

WILLIAM E. CAULFIELD,

Receivers, Mississippi Valley
Life Insurance Company,
Circuit Court, City of St.
Louis, Missouri.

ALVIN S. KEYS,

Receiver, Mississippi Valley
Life Insurance Company,
Circuit Court of Sangamon
County, Illinois, by transfer
from Circuit Court of Madi-
son County, Illinois.

[Endorsed]: Filed June 11, 1938. [70]

[Title of District Court and Cause.]

MOTION OF DEFENDANTS, REPUBLIC LIFE INSURANCE COMPANY OF DALLAS, TEXAS, A CORPORATION, J. G. VAUGHAN, M. J. DOUGHERTY, TO DISMISS PLAINTIFF'S FIRST AMENDED BILL OF COMPLAINT.

Come, Now, Defendants Republic Life Insurance Company of Dallas, Texas, a corporation, J. G. Vaughan and M. J. Dougherty and move the Court to dismiss plaintiff's First Amended Bill of Complaint filed herein upon the following grounds and for the following reasons:

Answering defendants move to dismiss said First Amended Bill of Complaint upon the ground and for the reason that it shows upon the face thereof that the plaintiff has not legal capacity to sue.

Answering defendants move the Court to dismiss said First Amended Bill of Complaint upon the ground and for the reason that said Bill of Complaint does not state facts sufficient to constitute a cause of action against answering defendants, or any of them, for the following reasons:

First, that said Bill of Complaint does not state facts sufficient to constitute a cause of action against answering defendants for the reason that said Bill of Complaint does not allege any amount due to the policy holders for whose benefit and security the alleged securities mentioned in the Complaint were deposited

with the Superintendent of [71] Insurance of the State of New Mexico, or any amount sought to be recovered and for the payment of which the alleged securities are sought to be foreclosed.

Second, that said Bill of Complaint does not state facts sufficient to constitute a cause of action against answering defendants for the reason that said Complaint does not show any lawful right or ownership in the plaintiff to the alleged securities, or lien sued on and sought to be foreclosed, or right or authority to maintain any action against said defendants, or any of them, for recovery thereunder or foreclosure thereof.

Third, that said Bill of Complaint does not state facts sufficient to constitute a cause of action against answering defendants for the reason that it shows upon the face of said complaint that the alleged securities sued on and sought to be foreclosed do not constitute an equitable lien, or mortgage, or any lien or mortgage, against the property described in the complaint and against which said securities are sought to be foreclosed.

Answering defendants move the Court for an order dismissing plaintiff's First Amended Bill of Complaint upon the ground and for the reason that the assignments of securities described in the Complaint and the instruments creating the alleged in-

debtedness sued on were executed without the State of Arizona, and that if plaintiff, or the Superintendent of Insurance of the State of New Mexico, or the State of New Mexico, or any one, ever had any right to sue on and enforce or foreclose the same, such right was, at the time of the filing of the Bill of Complaint herein, and is now, barred by the provisions of Subd. 3, Paragraph 2061, Revised Code of Arizona, 1928. [72]

Wherefore, Answering defendants pray that said complaint be dismissed as to said defendants and for costs.

G. W. SILVERTHORNE,
KENT SILVERTHORNE,

Address:

Suite 311 Phoenix Nat'l.
Bank Bldg., Phoenix, Arizona.

[Endorsed]: Filed Jul. 14, 1938. [73]

[Title of District Court and Cause.]

ANSWER OF R. L. DANIEL

Comes now R. L. Daniel, Life Insurance Commissioner of the State of Texas and says that he holds title to certain lands described in Plaintiff's original petition in this cause in trust for the protection of the policy holders and creditors of Republic National Life Insurance Company of Dallas, Texas, in accordance with the provisions of

Article 4740 Texas Revised Civil Statutes, which is herein set forth as follows for ready reference:

“Any life insurance company now or which may hereafter be incorporated under the laws of this State may deposit with the Commissioner for the common benefit of all the holders of its policies and annuity bonds, securities of the kinds in which, by the laws of this State, it is permitted to invest or loan its funds, equal to the legal reserve on all its outstanding policies in force, which securities shall be held by said Commissioner in trust for the purpose and objects herein specified. Any such company may deposit lawful money of the United States in lieu of the securities above referred to, or any portion thereof, and may also, for the purposes of such deposit, convey to said Commissioner in trust the real estate in which any portion of its said reserve may be lawfully invested. In such case, said [74] Commissioner shall hold the title thereto in trust until other securities in lieu thereof shall be deposited with him, whereupon he shall reconvey the same to such company. Said Commissioner may cause any such securities or real estate to be appraised and valued prior to their being deposited with, or convey to, him in trust as aforesaid, the reasonable expense of such appraisalment or valuation to be paid by the company.”

Said R. L. Daniel says that he has no other or further interest in said lands and that his above described interest therein is fully represented by the interest of Republic National Life Insurance Company, the principal Defendant herein, is as much as said Republic National Life Insurance Company is under legal obligation to maintain the value of its deposits as required by the laws of this State and it is not the responsibility of this Defendant to answer for said Company.

WILLIAM McCRAW,

Attorney General of Texas.

RICHARD BROOKS,

Assistant Attorney General.

[Endorsed]: Filed Jul. 9, 1938. [75]

[Title of District Court and Cause.]

ANSWER TO FIRST AMENDED BILL
OF COMPLAINT.

Comes now, the defendant, Grace V. Wallace Rowell, for herself and as guardian ad litem of William H. Wallace, and Anna Louise Wallace, Minors, and making answer to the first amended bill of complaint, admits, denies and alleges as follows:

I.

Answering Paragraphs I, II, III, IV, V, VI, VIII, X, XII, XIII, XV, XVI, XIX, XX, XXII,

XXIII, XXIV, and the first, second and third Paragraphs XVII, this defendant not having sufficient knowledge or information to either affirm or deny the matters and things set up in said enumerated paragraphs, denies categorically each, every, all and singular the allegations contained in said above enumerated paragraphs, and demand strict proof thereof.

This defendant, however, admits that she and the minor children are each citizens of the State of Arizona, and reside in the County of Maricopa, State of Arizona, as alleged in Paragraph I of the Amended Complaint. [78]

II.

Answering Paragraph VII these defendants admit the allegations of said Paragraph VII.

III.

Answering Paragraph IX, these defendants admit the allegations of said Paragraph IX.

IV.

Answering Paragraph XI, these defendants admit that Exhibit "I" mentioned in said Paragraph XI, was duly signed and executed by the defendant, Grace V. Wallace and her husband, James Q. Wallace, now deceased; as to the remainder and balance of the matters and things set up in and alleged in said Paragraph XI, these defendants not having sufficient knowledge or information to

either affirm or deny the remaining matters set up in said Paragraph XI, for the purpose of this answer deny categorically each, every, all and singular, the allegations in said Paragraph XI contained.

V.

Answering Paragraph XIV, these defendants admit that in the month of July, 1928, James Q. Wallace died, and that Grace V. Wallace was appointed and qualified as Administratrix of the Estate of James Q. Wallace; and that the Mississippi Valley Life Insurance Company agreed with the said Grace V. Wallace, Administratrix, to continue and keep the said executory contract alive in the name and right of said administratrix, and that said contract was extended for a period of two years after January 16, 1931; and these defendants allege that there was paid upon said contract the sum of One Thousand Dollars (\$1,000.00) in the year 1924, and the sum of One Thousand Dollars (\$1,000.00) in the year 1925; as to the remaining allegations in said Paragraph XIV not specifically answered herein, these defendants not having sufficient knowledge or information to either affirm or deny said [79] unanswered portions of Paragraph XIV, for the purpose of this Answer categorically deny each, every, all and singular, the allegations in said Paragraph XIV contained, to which a specific answer has not already been made, and demand strict proof thereof.

VI.

Answering the unanswered portion, same being the last paragraph in the numbered Paragraph XVII of the bill of complaint, these defendants admit all of said allegations, excepting only that portion that alleges that the defendant Grace V. Wallace Rowell did not sell the interest of the estate or of the minor children, William H. Wallace and Anna Louise Wallace, and in that respect alleges; that all interest in said property on the part of these defendants was contemplated to be sold and disposed of by the transaction made between the defendant, Grace V. Rowell and Republic Life Insurance Company.

VII.

Answering Paragraph XVIII, these defendants not having knowledge or information as to the matters and things set out therein as to Exhibit "K", or the other allegations in said Paragraph XVIII, to either affirm or deny the allegations of said Paragraph XVIII, for the purpose of this answer, categorically deny each, every, all and singular, generally and specially, the allegations set forth in Paragraph XVIII of the Amended Bill of Complaint.

VIII.

Answering Paragraph XXI, this defendant for herself and minor children, alleges that she has no knowledge of any interest in said property belonging to herself or the minor children, or any knowledge of any right that may accrue to her or the

minor children, the defendant admitting that her husband, F. D. Rowell, had no interest in said property, and this defendant alleges that if upon the hearing of this action, it is determined by the Court that some right, title or interest remains in this defendant, Grace [80] V. Rowell, or the minor children for whom she acts as guardian ad litem, that such rights be, by the Court established and secured.

IX.

Answering Paragraph XXV, these defendants admit that from the allegations in said complaint, same is a matter based in equity.

Wherefore, having fully answered, this defendant for herself, and as guardian ad litem for William H. Wallace and Anna Louise Wallace, minor children, prays for such relief as may be by the Court determined upon the trial of the issues herein, and if any rights accrue to this defendant, or to the minor children, that same be established and secured by the Court.

HERMAN LEWKOWITZ,

Attorney for Defendants,
Grace V. Wallace Rowell;
and Grace V. Wallace Rowell
as Guardian Ad Litem for
the minor children, William
H. Wallace, and Anna Louise
Wallace. [81]

State of Arizona,
County of Maricopa—ss.

Grace V. Wallace Rowell, being on oath first duly sworn deposes and says:

That she is one of the defendants named in the foregoing and entitled actions, and appears in this action as Guardian Ad Litem for the minor children, William H. Wallace, and Anna Louise Wallace, and makes this affidavit on behalf of herself and as guardian ad litem; that she has read the amended bill of complaint, and this answer; and as to the matters and things alleged in the bill of complaint and denied in this answer, this answer is true; as to the matters and things plead in this answer on information and belief, affiant believes them true.

GRACE V. WALLACE ROWELL.

Subscribed and sworn to before me this 23rd day of September, 1938.

[Seal] HERMAN LEWKOWITZ,
Notary Public.

My Commission expires: July 24, 1941.

Copy of the within instrument mailed this 23rd day of September, 1938, to the attorney for plaintiff.

HERMAN LEWKOWITZ,
Attorney for defendants, Grace
Wallace Rowell and Grace Wal-
lace Rowell, Guardian ad litem.

[Endorsed]: Filed Sep. 24, 1938. [82]

In the United States District Court
for the District of Arizona

October 1938 Term

At Phoenix

Minute Entry of
FRIDAY, MARCH 24, 1939
(Phoenix Division)

Honorable Dave W. Ling,
United States District Judge, Presiding

E-361

JOHN T. WATSON, Liquidating Receiver of and
for the Superintendent of Insurance of State
of New Mexico,

Plaintiff,

vs.

REPUBLIC LIFE INSURANCE COMPANY
OF DALLAS, TEXAS, a corporation, et al,
Defendants.

It Is Ordered that form of judgment for the de-
fendants, approved as to form by counsel for the
plaintiff, be entered and spread upon the minutes
as the judgment in this case, as follows:

E-361

JOHN T. WATSON, Liquidating Receiver of and
for the Superintendent of Insurance of State
of New Mexico,

Complainant,

vs.

REPUBLIC LIFE INSURANCE COMPANY
OF DALLAS, TEXAS, a corporation, et al,
Defendants.

JUDGMENT

Honorable Dave W. Ling,
United States District Judge, Presiding.

The defendants, Republic Life Insurance Company of Dallas, Texas, a corporation, J. G. Vaughan and M. J. Dougherty, through their attorneys, G. W. Silverthorne and Kent Silverthorne, having filed herein their motion to dismiss the complainant's first amended bill of complaint and the same having been presented to the Court and submitted, and briefs having been filed on behalf of complainant and said defendants, and the Court having taken the matter under advisement and having considered the same, and the Court, being fully advised and having on the 1st day of March, 1939 made and entered its order herein that said motion to dismiss said first amended bill of complaint be granted, and that the case be dismissed, [84]'

Now, Therefore, It Is By the Court Ordered, Adjudged and Decreed: That the motion of Republic Life Insurance Company of Dallas, Texas, a corporation, J. G. Vaughan and M. J. Dougherty to dismiss complainant's first amended bill of complaint be, and the same is hereby granted, and that the above-entitled suit be, and the same is hereby, dismissed, and that said defendants have and recover their costs herein incurred and taxed in the sum of \$.....

Approved As to Form March 22, 1939.

FRED C. KNOLLENBERG [85]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that John T. Watson, Liquidating Receiver, plaintiff in the above entitled action, appeals to the United States Circuit Court of Appeals for the Ninth Circuit, from the judgment of the District Court of the United States in and for the District of Arizona, made and entered on the twenty-fourth day of March, A. D. 1939, in said cause, adjudging that plaintiff take nothing by his action, and dismissing the complaint in said cause of action, and granting judgment for costs in favor of the defendants, Republic Life Insurance Company of Dallas, Texas, J. G. Vaughan and M. J. Dougherty, and from the whole thereof.

WILSON AND WATSON,

Post Office address:

Sena Plaza, Santa Fe, N. M.;

By FRED C. KNOLLENBERG

FRED C. KNOLLENBERG

Post Office Address:

415 Caples Bldg.,

El Paso, Texas.

[Endorsed]: Filed Jun. 22, 1939. [86]

[Title of District Court and Cause.]

APPEAL BOND

Know All Men By These Presents: That we, John T. Watson, Liquidating Receiver, as Prin-

cipal, and American Employers' Insurance Company, a corporation, as Sureties, are held and firmly bound unto the defendants, Republic Life Insurance Company of Dallas, Texas, a corporation, H. B. Hershey, Receiver of Mississippi Valley Life Insurance Company, under appointment by the Circuit Court of Sangamon County, Illinois; and R. E. O'Malley and William E. Caulfield, Receivers of said Mississippi Valley Life Insurance Company, under appointment by the Circuit Court of the City of St. Louis, Missouri; J. G. Vaughan, M. J. Dougherty, Grace V. Rowell, formerly Grace V. Wallace, William H. Wallace, a minor, Anna Louise Wallace, a minor, R. L. Daniel, Chairman of the Board of the Insurance Commission of the State of Texas, in the full and just sum of Two Hundred Fifty and No/100 Dollars (\$250.00), to be paid to the said defendants, their certain attorneys, executors, administrators or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents, to secure the payment of the costs if the appeal is dismissed or the judgment affirmed, or of such costs as the appellate court may award if the judgment is modified.

Sealed with our seals, and dated this 22nd day of June in the Year of Our Lord One Thousand Nine Hundred Thirty-nine.

Whereas, lately, in the District Court of the United States in and for the District of Arizona, in a suit pending in said court between John T.

Watson, Liquidating Receiver of and for the Superintendent of Insurance of the State of New Mexico, [87] Complainant, and Republic Life Insurance Company of Dallas, Texas, a corporation, H. B. Hershey, Receiver of Mississippi Valley Life Insurance Company, under appointment by the Circuit Court of Sangamon County, Illinois, and R. E. O'Malley and William E. Caulfield, Receivers of said Mississippi Valley Life Insurance Company, under appointment by the Circuit Court of the City of St. Louis, Missouri, J. G. Vaughan, M. J. Dougherty, Grace V. Rowell, formerly Grace V. Wallace, William H. Wallace, a minor, Anna Louise Wallace, a minor, R. L. Daniel, Chairman of the Board of the Insurance Commission of the State of Texas, Defendants, a decree was rendered against the said John T. Watson, Liquidating Receiver of and for the Superintendent of Insurance of the State of New Mexico, on the twenty-fourth day of March, A. D. 1939, dismissing complainant's first amended bill of complaint, upon the motion of the defendants, and the said complainant, after having given notice of appeal to the United States Circuit Court of Appeals for the Ninth Circuit;

Now, the condition of the above obligation is such that if the said John T. Watson, Liquidating Receiver of and for the Superintendent of Insurance of the State of New Mexico, shall prosecute his appeal to effect and answer all damages and costs if he fail to make his plea good, then the above

obligation to be void, else to remain in full force and virtue.

JOHN T. WATSON

Complainant.

[Seal]

AMERICAN EMPLOYERS'
INSURANCE COMPANY

Surety.

By R. L. CHARLES

Its attorney in fact.

Surety.

[Endorsed]: Filed Jun. 22, 1939. [88]

[Title of District Court.]

United States of America

District of Arizona—ss:

I, Edward W. Scruggs, Clerk of the United States District Court for the District of Arizona, do hereby certify that I am the custodian of the records, papers and files of the said Court, including the records, papers and files in the case of John T. Watson, Liquidating Receiver of and for the Superintendent of Insurance of the State of New Mexico, Plaintiff, versus Republic Life Insurance Company of Dallas, Texas, a corporation, et al, Defendants, numbered E-361 Phoenix, on the docket of said Court.

I further certify that the attached pages, numbered 1 to 93, inclusive, contain a full, true and correct transcript of the proceedings of said cause

and all the papers filed therein, called for and designated in Plaintiff's Designation and Supplemental Designation of Contents of Record on Appeal filed in said cause and made a part of the transcript attached hereto, as the same appear from the originals of record and on file in my office as such Clerk, in the City of Phoenix, State and District aforesaid.

I further certify that the Clerk's fee for preparing and certifying to this said transcript of record amounts to the sum of \$21.30 and that said sum has been paid to me by counsel for the appellant.

Witness my hand and the seal of said Court this 25th day of July, 1939.

[Seal]

EDWARD W. SCRUGGS,

Clerk

By WM. H. LOVELESS

Chief Deputy Clerk [93]

[Endorsed]: No. 9243. United States Circuit Court of Appeals for the Ninth Circuit. John T. Watson, Liquidating Receiver of and for the Superintendent of Insurance of the State of New Mexico, Appellant, vs. Republic Life Insurance Company of Dallas, Texas, a corporation, H. B. Hershey, Receiver of Mississippi Valley Life Insurance Company, R. E. O'Malley and William E. Caulfield, Receivers, J. G. Vaughan, M. J. Dougherty, Grace V. Rowell formerly Grace V. Wallace, William H. Wallace, a minor, Anna Louise Wallace, a minor R. L. Daniel, Chairman of the Board of the Insur-

ance Commission of the State of Texas, Appellees.
Transcript of Record upon Appeal from the District Court of the United States for the District of Arizona.

Filed July 27, 1939.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the District Court of the United States
in and for the District of Arizona

#9243

In Equity—No. E-361

JOHN T. WATSON, Liquidating Receiver of and
for the Superintendent of Insurance of State
of New Mexico,

Complainant,

v.

REPUBLIC LIFE INSURANCE COMPANY
OF DALLAS, TEXAS, a corporation, et al,
Defendants.

POINTS RELIED UPON FOR REVERSAL
AND RECORD NECESSARY TO PROVE
SAME.

To the Honorable Clerk of the United States Circuit Court of Appeals, San Francisco, California:

In compliance with Subdivision Six of Rule 19 of the United States Circuit Court of Appeals for

the Ninth Circuit, appellant says that the United States District Court sustained a motion to strike, and that by virtue thereof the points or propositions of law upon which he intends to rely upon the appeal in this case are the ones raised by the defendants in their motion to strike, as follows:

1. That plaintiff does have legal capacity to bring this suit.

2. That the first amended bill of complaint does state facts sufficient to constitute a cause of action against the defendants.

3. That it is not necessary to allege any amount due the policyholders for whose benefit and security the securities mentioned in the first amended bill of complaint were deposited, but the allegations therein made are sufficient to constitute a cause of action.

4. That the first amended bill of complaint does state facts sufficient to show lawful right or ownership in the plaintiff to the securities and liens sued on and sought to be foreclosed.

5. That plaintiff does have right and authority to maintain the action against the defendants for the recovery on said lien and the foreclosure thereof.

6. That the security sued on and for which foreclosure is asked does constitute an equitable lien or mortgage against the property described in the first amended bill of complaint, and should have been foreclosed.

7. That the claim of plaintiff is not barred by the provisions of subdivision three, paragraph 2061, Revised Code of Arizona, 1898.

That appellant considers the following parts of the record necessary for the consideration of the points above raised, to-wit:

1. Petition for leave to sue, and order granting leave.

2. First amended bill of complaint.

3. Motion to dismiss first amended bill of complaint.

4. Separate answer of J. G. Vaughan.

5. Answer of H. B. Hershey, Receiver of Mississippi Valley Life Insurance Company.

6. Answer of Grace V. Rowell.

7. Answer of R. L. Daniel, Chairman of the Board of Insurance Commissioners of the State of Texas.

8. The Judgment.

That he is mailing a copy hereof to the following attorneys, who represent defendants:

Herman Lewkowitz, Esq., First National Bank of Arizona Building, Phoenix, Arizona;

Darrell R. Parker, Esq., Mesa, Arizona;

Charles E. Bliss, Esq., 515 South Grand Avenue, East, Springfield, Illinois;

Cecil A. Morgan, Esq., First National Bank Building, Fort Worth, Texas;

William McCraw, Esq., Attorney General of Texas, Austin, Texas.

Appellant shows that a copy of the above is served upon Silverthorne and Silverthorne, as per their receipt hereto attached.

Wherefore, the court having sustained the demurrer, committed error as on the propositions above set forth, and upon hearing appellant asks that the judgment of the trial court be reversed.

WILSON & WATSON,

Post Office Address:

Sena Plaza,

Santa Fe, New Mexico,

By FRED C. KNOLLENBERG

FRED C. KNOLLENBERG

Post Office Address:

415 Caples Bldg.,

El Paso, Texas.

We, the undersigned, attorneys for certain defendants who filed the Motion to Dismiss, do hereby acknowledge receipt of a copy of the foregoing points or propositions of law and the request for parts of the record to sustain the appeal.

SILVERTHORNE & SILVERTHORNE

[Endorsed]: Filed July 27, 1939. Paul P. O'Brien, Clerk.